



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

SUCCESSION CAUSE NO. 1 OF 2018

(CORAM: HON. R.E. ABURILI - J)

IN THE MATTER OF THE ESTATE OF PETER AJULU JAJWALO....(DECEASED)

AND

IN THE MATTER OF SUMMONS FOR CONFIRMATION OF GRANT

BY PETER OTIENO AJULU AND DANIEL STEPHENORWA

JAJWALO.....APPLICANTS/PETITIONERS

RULING ON DIRECTIONS FOR DISTRIBUTION OF THE ESTATE

1. On 5/12/2018, this court recalled and revoked a grant of letters of administration intestate issued on 23/3/2018 to the petitioner **Peter Otiemo Ajulu** to administer the estate of the deceased **Peter Ajulu Jajwalo**. The reason for the revocation was that the grant had been issued and signed by the Deputy Registrar of this court without jurisdiction. I also ordered that a proper grant be issued and signed by the Judge, which was done, and the revoked grant was surrendered to the court.
2. The Petitioner was also granted leave of court to apply for confirmation of the grant as reissued on 21/1/2019 and seek for waiver of the six months waiting period.
3. The Administrator had petitioned for grant in person but later engaged an advocate, Mr. Arika to represent them in these proceedings.
4. The court set 9/7/2019 for confirmation of the grant and directed that the Administrator files a schedule of distribution of the estate, ensuring that all beneficiaries of the estate are catered for and that they attend court to verify the schedule of distribution of the estate as per the summons for confirmation of the grant dated 24/4/2019.
5. However, when the parties appeared before the court on 10/6/2019, I noted that there were no search certificates to verify ownership and or existence of the parcels of land which were distributed to the beneficiaries. I therefore directed that search certificates for all the parcels of land subject of the succession proceedings be obtained and filed in court. On 9/7/2019 when the matter came up for hearing of summons for confirmation of grant, the said search certificates had not been released by the Land Registrar. The matter was then fixed for 18/9/2019.
6. On the latter date, all parties were present in court. However, I observed that some of the green cards and search certificates filed in a bundle dated 13/8/2019 containing a consent on the mode of distribution of the estate of the deceased **Peter Ajulu Jajwalo** do not reflect the deceased being the registered proprietor of the respective parcels of land.
7. In the consent dated 13/8/2019 and signed by all the beneficiaries, the parcels of land which are listed for distribution are as follows, against the respective beneficiaries.

<i>Name</i>	<i>Property</i>	<i>Shares</i>
<i>Janet Aoko Afwayo</i>	<i>South Sakwa/Barkowino</i> <i>3417-Homestead</i>	<ul style="list-style-type: none"> <i>Life interest</i>

	3419, 2929 - Cultivation	
Peter Otieno Ajulu	2866, 2930, 3035, 2864, 4507, 3036, 4472	• Wholly
Daniel Stephen Orwa Ajulu	2865, 2867, 3420, 4508, 4279	• Wholly
Jared Otieno Ajulu	3268, 2865, 3081, 3082	• Wholly
Peter Otieno Ajulu and Daniel Stephen Orwa	3268, 6959, 6958, 3269, 3861, 3862, 2955	• In trust for all the beneficiaries / survivors

8. The consent is signed by all the beneficiaries in the presence of Gideon Odongo Advocate and Commissioner for Oaths. However, the search certificates annexed to the schedule of distribution of the estate of the deceased show as follows:

i. Land Parcel No. **South Sakwa/Barkowino/3417** which measured 0.14 hectares and registered on 19/8/1993 in the name of **Peter Ajulu Jajwalo** was on 23/6/1996 closed on subdivision into plots Nos 3755 and 3756. Accordingly, that Title 3417 does not exist and is therefore not available for distribution to the beneficiaries. This is also as per the Green card obtained on 30/7/2019.

ii. Land Parcel No. **South Sakwa/Barkowino/3419** purportedly assigned to **Janet Aoko Afwayo** too is not registered in the name of **Peter Ajulu Jajwalo**. It is registered in the name of **Benard Ochieng Ongong** from 14/1/1999 and was a subdivision of Plot No. 2956. The latter plot belonged to the deceased **Peter Ajulu Jajwalo** but following the subdivision, registration of No. 3419 was done on 19/8/1993 and on the same day, a transfer effected in favour of **Silfanus Omeno Odera** who later on 14/1/1999 transferred it to **Benard Ochieng Ongong**. Accordingly, the said parcel no. 3419 is not available for distribution to any beneficiary.

iii. Similarly, Parcel No. **South Sakwa/Barkowino/2929** given to the widow as per the schedule of distribution is registered in the name of **Nicholas Gumbo** from 11/7/2006 and is a subdivision of parcel No. 2869.

iv. The green card for Plot No. 2929 shows that it was transferred to **Jane Alice Membo** on 8.11.1993 by **Peter Ajulu Jajwalo** at a consideration. **Jane Alice Membo** transferred it to **John Kotonya Amollo** on 23.2.2001; it was later transferred to **James Atweng'a Odingi** on 3.10.2005, and subsequently to **Nicholas Gumbo** on 11.7.2006 hence the land is not available for distribution to any beneficiary, despite the caution lodged by **Daniel Stephen Orwa Ajulu** claiming beneficiary interest on 11/12/2018.

v. Parcel No. 2866 purportedly given to **Peter Otieno Ajulu** too was on 3.5.1989 transferred by **Peter Ajulu Jajwalo** at a consideration to **Maurice Nyanjage Oracha** hence it is not available for distribution to any beneficiary.

vi. The same scenario applies to parcels nos. 2930 registered in the name of **John D. Onyango**; from 18.12.1989; 3035 registered in the name of **Fredrick Odhiambo Ogache** from 20.11.2014 from **Erick Oduor Opot**, who got title from **Grace Achieng Ogweyo**, who was given title by **Gordon Isaya Ogoye Orende**. The latter got title from the deceased **Peter Ajulu Jajwalo** on 7.5.1991. Therefore, this land is not available for distribution to any beneficiary.

vii. Plot No. 2864 is registered in the name of **Ebrahim Rakki Asman** from 4.8.2017. He got title from **Martin Umayo Suri** and the latter obtained title from **Peter Ajulu Jajwalo** on 5.10.1989 at a consideration. It's not available for distribution. Similarly, Plot 4507 is not available for distribution because it is registered in the name of **Samson Benedict Abura Achieng** from 26.7.2012 who got title from **Leonadus Hagona Okumba**. The latter got title on 15.4.2002 after subdivision of Plot No. 2890.

viii. Plot No. **South Sakwa/Barkowino/3036** is also not available for distribution. It is registered in the name of **David O. Omolo** from 9/4/1992 and is a subdivision from Plot 2957. He got title from **Hellen Awuor Olum** who got it from **Peter Ajulu Jajwalo** on 9.4.1992.

ix. Plot No. 4472 is equally unavailable for distribution. It is a subdivision of 3171. It is registered in the name of **Hezron Kadullo Mariwa** from 20/2/2019. The title was previously registered in the name of **Lucy Anyango Mala** on 3/10/2002 who got it from **Jacob Orwa Owuor**.

x. Plot No. 2868 is registered in favour of **Roslida Ogutu Okumu** from 2.2.1990 but cautioned on 11/12/2018 by **Ifo Daniel Stephen Orwa Ajulu**. **Roslida Ogutu Okumu** got title on 2.2.1990 from **Peter Ajulu Jajwalo**.

xi. Plot No. 2867 is registered in the name of **Everlyne Atieno Hawona** from 4.4.2018. The Green Card shows that it is a subdivision of Plot No. 508 and was on 15.5.21989 transferred by **Peter Ajulu Jajwalo** to **James Adiel Ojung** who later on 24.5.1994 transferred it to **Keffa Otieno Adiel**. The latter transferred it to **Gabriel Arianda Ojall** on 24.7.1998. This land is not available for distribution.

xii. Plot No. 3420 is registered in the name of **Roselyne O. Rangale** from 19.8.1993. It is not available for distribution.

xiii. Plot No. 4508 is registered in favour of **Samson Benedict Abura Achieng** from 12.4.2010. He got title from **Leonardus Hagona Okumba**. It is therefore not available for distribution.

xiv. Plot No. 4279 is registered in the name of **Peter Ajulu Jajwalo** on 26/1/1999. It measures 0.05 Ha. It belongs to the deceased hence it is available for distribution.

xv. Plot No. 3418 is registered in favour of **Wycliffe Ochieng Okoth** from 26/5/2017. He got title from **Oliver Otieno Arika** who got it from **Miyare Aketch Josiah** who got it from **Jane Atieno Obala** through succession, who got it from **Jackinda Samuel Obala**. It is a subdivision of Plot 2956. It is not available for distribution.

xvi. Plot No. 2865 is registered in favour of **Syprosa Nyagudi Odhiambo** from 12/7/2012. She got title from **Josephine Mala** who got it from **Peter Ajulu Jajwalo** on 15.5.1989. The land is therefore not available for distribution.

xvii. Plot No. 3081 is registered in favour of **Jenifa Oyieke Amolo** on 29/10/2015. It originally belonged to **Peter Ajulu Jajwalo** from 27/8/1990 who transferred it to **Frank Obado Amolo** on 16.6.1997. This land is not available for distribution.

xviii. Plot No. 3265 is reserved for **Bondo Bus Park** so it is not available for distribution to the beneficiaries.

xix. Plot No. 3268 is registered in the name of **Siaya County Council** on 30.6.1994 from **Peter Ajulu Jajwalo** hence it is not available for distribution to any beneficiary.

xx. Plot No. 6959 is registered in favour of **Michael Otieno Orondo** from 6/11/2013. He got title from **Obel Company Ltd** on 6/11/2013 and the title has a restriction under **Section 87 of the Land Act** and a caution by **Comrades Youth Group** claiming security for a loan. It is not available for distribution to the beneficiaries.

xxi. Parcel No. 6958 is registered in favour of **Obel Company Ltd** and has several restrictions under **Section 87 and 59 of the Land Act**. It is not available for distribution.

xxii. Parcel No. 3269 is registered in favour of **Omboke Family Company Ltd** on 15/11/1999, who got title from **Margaret Awino Omboke** who got her title from **Peter Ajulu Jajwalo** on 25.2.1992. This land is not available for distribution. The same applies to Parcel No. 3861 who got title from **Caroline Phoebe Juma** on 15.1.1999.

xxiii. Parcel No. 3082 is registered in favour of **Elijah Okeya Ogutu** on 25.4.1995 who got title from **Charles Odhiambo More** and the latter got title from **Peter Ajulu Jajwalo** on 31/8/1990. This land is not available for distribution.

xxiv. Parcel No. 2955 is registered in favour of **David O. Omolo** on 2.2.2017. He got title from **Fredrick Nyakwaka Awango** who got title from **Jared Kera Osure**. The latter got title from **Peter Ajulu Jajwalo** on 25.10.1991. Accordingly, this land is not available for distribution for any beneficiary.

xv. Parcel No. 3862 is registered in favour of **Omboke Family Company** on 15.1.1999. They got title from **Herine Adipo Opacho** who got it from **Caroline Phoebe Juma** on 20.3.1996. This land is not available for distribution and finally, Plot No. 417 is reserved for the **Adero Nursery School** as public land and is registered in favour of **Siaya County Council** from 18.11.1985. It is not available for distribution to the beneficiaries.

9. Having perused all the search certificates and green cards, and having found that only parcel No. South Sakwa/Barkowino/4279 is registered in the name of the deceased **Peter Ajulu Jajwalo**, I find and hold that only this parcel of land is available for distribution as the estate of the deceased **Peter Ajulu Jajwalo** to the beneficiaries.

10. I further find and hold that all the other parcels of land listed in the consent and schedule of distribution are not available for distribution to any of the beneficiaries of the late **Peter Ajulu Jajwalo** who died intestate on 8.3.2016 aged 85 years at Barkowino, Bondo and survived by **Janet Aoko Afwayo** – widow, **Peter Otieno Ajulu** - son, **Daniel Stephen Ouma Ajulu** - son and **Jared Otieno Ajulu** as verified by the letter dated 4/7/2017 signed by **James A. Okumu**, Ag. Chief, Bondo Township location.

11. It therefore follows that the P&A form filed on 15/1/2018 purporting to estimate the deceased's estate to be equivalent to fifty million Kshs. 50,00,000/= is incorrect. No such estate of the deceased **Peter Ajulu Jajwalo** exists in law or in fact.

12. It also follows that the P&A form 80 filed on 15/1/2018 listing parcels of land No(s) **South Sakwa/Barkowino/3755, 4283, 3418, 3083, 2430, 2955, 2865, 2929, 3419, 2867, 4280, 3036, 3081, 4284, 4281, 3035 and 3035** was erroneous. The only parcel that ought to have been listed as the asset left behind by the deceased for distribution is Parcel No. **South Sakwa/Barkowino/4279**.

13. Accordingly, I order and direct the administrators of the estate of the deceased **Peter Ajulu Jajwalo** being **Peter Otieno Ajulu** and **Daniel Stephen Orwa Ajulu** to file a fresh schedule of distribution of the estate of the deceased **Peter Ajulu Jajwalo**, distributing land Parcel No. **South Sakwa/Barkowino/4279** amongst all the four beneficiaries of the estate of the deceased.

14. The schedule of distribution filed before this court and the consent to the mode of distribution dated 13/8/2019 is hereby rejected and struck out.

Dated, signed and Delivered at Siaya, this 5th Day of November, 2019

R.E. ABURILI

JUDGE

In the presence e of:

Mr Ochanyo h/b for Mr Arika for the Petitioners/beneficiaries

All petitioners and beneficiaries are present

CA: Modestar and Beryl