

REPUBLIC OF KENYA

IN THE HIGH COURT AT KISUMU

SUCCESSION CAUSE NO. 734 OF 2009

IN THE MATTER OF THE ESTATE OF

DAUDI ORACH ADONGO (DECEASED)

AND IN THE MATTER OF APPLICATION

BETWEEN

DANIEL OTIENO ORACHAPPLICANT/ADMINISTRATOR

AND

JOAN AUMA ORACHRESPONDENT/ADMINISTRATOR

RULING

1. This matter concerns the estate of **DAUDI ORACH ADONGO** of Abwao Kabar West in Kisumu County. He died on 18th June 1990. During his lifetime, he married five wives and had 15 children. He also left behind several properties. After Daniel Otieno Orach and Joan Auma Orach were appointed administrators of the estate by the grant of letters of administration dated 22nd June 2010, the estate went into a lull and was not administered until a summons for revocation was filed on 28th July 2015 to revoke the grant on the ground that two of the deceased's sons; Daniel Otieno Orach and Paul Omondi Orach were allegedly selling one of the properties **Kisumu/Got Abuor/435**.

2. When the matter came up before me on 23rd June 2016, I directed that the administrators or any them to file an application for confirmation of the grant so that the estate may be wound up. That application was heard in part and I allowed the family to sit and agree on the mode of distribution. The parties have since agreed on the mode of distribution but the problem in finalizing this estate is that the distribution of two properties; **Kisumu/Got Abuoro/035** and **Kisumu/Got Abuoro/435**. The parties confirm that all the other properties have no dispute.

3. I heard the parties and their advocates and resolution of the matter is complicated by the fact that **Kisumu/Got Abuoro/435** was sold to Henry Odhiambo Ojude. According to the depositions and evidence available, the family decided that the property should be sold to support the upkeep of the deceased's surviving widows; Margaret Arwa Orach, Joan Auma Orach and Phoebe Obiya Orach. They consented to the sale but it is now opposed by Daniel Otieno Orach.

4. One thing is of course clear that unless all beneficiaries consent, the court cannot sanction the sale of part of the deceased's estate without a Certificate of Confirmation of Grant. The sale of the property is therefore void for all intents as purposes. Such a sale or agreement is void as it is contrary to **section 45** and **82** of the *Law of Succession Act (Chapter 80 of the Laws of Kenya)*.

5. Having so held, the only resolution is to distribute the properties in accordance with **section 40** of the *Law of Succession Act*. I distribute **Kisumu/Got Abuoro/035** and **435** to each house equally that is to Jane Akach Orach, Margaret Arwa Orach, Joan Auma Orach and Phoebe Obiya Orach in equal shares. The parties are given an opportunity to agree on how the shares in each house are to be distributed.

6. In the meantime, if parties are not agreed on how to share the property within each family, the said

widows shall refund Henry Odhiambo Ojude the sum of **Kshs 1,050,000/=** within 60 days or such time as they may agree.

7. Subject to the orders I have made, the summons for confirmation dated 1st August 2016 is accordingly adjourned pending compliance with these orders.

DATED and DELIVERED at KISUMU this 1st day of February 2018.

D. S. MAJANJA

JUDGE

Mr Anyul instructed by D. O. E. Anyul and Company Advocates for the applicant

Mr Achura instructed Amondi and Company Advocates for the respondent and beneficiaries.