



IN THE HIGH COURT OF KENYA AT BUSIA

PROBATE & ADMINISTRATION NO. 18 OF 2016

IN THE ESTATE OF: SITUNDO OTSIENO.....DECEASED

BETWEEN

FLORENCE AUMA WEKESA.....PETIONER/ RESPONDENT

AND

1. PATRICK OMONDI KEYA

2. JOSEPH MUYA KEYA OBJECTORS/APPLICANTS

3. ODA SITUNDO

RULING

1. PATRICK OMONDI KEYA, JOSEPH MUYA KEYA and ODA SITUNDO the applicants herein filed an application dated 20th April 2016 for setting aside the confirmation of grant dated 21st July 2015. It is premised on the following grounds:

- a. That some beneficiaries were not catered for.
- b. That the respondent herein is not the rightful administrator of the estate of the deceased **SITUNDO OTSIENO**.

2. The application was opposed by **FLORENCE AUMA WEKESA**, the petitioner/respondent on the following grounds:

- a) That the applicants are not beneficiaries in the estate of **SITUNDO OTSIENO**.
- b) That the application is in want of merits.

3. At the time of hearing of the objection, the respondent conceded that the 3rd objector Oda Situndo was her step sister. She also acknowledged that she is entitled to inherit from the estate of their father **SITUNDO OTSIENO**.

4. Both parties acknowledged that land parcel number **MARACHI/ELUKONGO 1293** was in the name **Philip Situndo Otsieno**, the petitioner's and 3rd objector's deceased father. The 1st and the 2nd objectors are their cousins. The latter's father was James Keya, an elder brother of Situndo Otsieno.

5. The land parcel in dispute was originally part of the larger estate of Otsieno Muya, the disputing parties' grandfather. The administrator of the estate of Otsieno Muya was Ndakala Otsieno.

6. According to the 1st and the 2nd objectors, the distribution of their grandfather's estate was done while their father was in Uganda. Situndo Otsieno therefore was registered as the proprietor of land parcel number **MARACHI/ELUKONGO 1293** for himself and in trust of his brother James Keya.

7. The argument by Florence Auma Wekesa is that **SITUNDO OTSIENO** held land parcel number **MARACHI/ELUKONGO 1293** absolutely.

8. After listening to both parties and considering their evidence, I have come to the conclusion that the 1st and the 2nd respondents are not beneficiaries in the estate of **SITUNDO OTSIENO** due to the following reasons:

- a) When James Keya returned from Uganda, if it was true that Situndo Otsieno held the land in trust for him, he would have claimed

his share. He never did so. He did not pursue the issue with Ndakala Otsieno, who was the administrator of their father's estate was.

b) If the objectors' contention was true, they ought to have called some witnesses who were present during the said arrangement.

c) The copy of the official search in respect of land parcel number **MARACHI/ELUKONGO 1293** dated 6th August 2008 indicated that the said parcel of land was registered in the name of **SITUNDO OTSIENO** absolutely. Had he been registered as holding the same for himself and his brother James Keya, it would have been reflected.

9. I therefore, from the foregoing make a finding that the 1st and the 2nd objectors are not beneficiaries in respect of the estate of **SITUNDO OTSIENO**. Their objection is dismissed.

10. The petitioner has acknowledged that the 3rd objector is a beneficiary. Even without such an acknowledgment, I would have found the same. This will therefore mean that the grant confirmed on 21st July 2015 cannot stand. The petitioner is directed to file another proposal for distribution that will take care of the interests of Oda Situndo, as a beneficiary, to be filed in court within three months of this ruling.

11. Each party herein will bear own costs.

DELIVERED and SIGNED at BUSIA this 17th day of July, 2018

KIARIE WAWERU KIARIE

JUDGE