



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MIGORI**

**SUCCESSION CAUSE NO. 262 OF 2015**

**IN THE MATTER OF THE ESTATE OF DAVID NGUKRI OORO (DECEASED)**

**-between-**

**PHESTO ALOO OORO & 5 OTHERS ..... APPLICANTS/OBJECTORS**

**-versus-**

**JOHNSON AMEK OORO ..... RESPONDENT/RESPONDENT**

**RULING**

1. By the Summons for revocation dated 05/07/2015 and filed in Court on 20/07/2015, the Applicants herein applied for the revocation of the grant of the representation in respect of the estate of **David Ngukri Ooro** (hereinafter referred to as '**the deceased**') which was issued to **Johnson Amek Ooro**, the Respondent herein, who was the Petitioner before the then Senior Resident Magistrate's Court's at Migori in Succession Cause No. 95 of 2012.
2. That grant was eventually confirmed by the lower court on 16/04/2013 and the then sole property known as **Suna East/Wasweta I/9238** forming the estate of the deceased wholly devolved to the Petitioner/Respondent herein.
3. Two years later, the Applicants filed the application under consideration. The application for revocation is opposed by the Respondent.
4. Directions on the hearing of the application were initially taken to the effect that the application be heard by way of oral evidence but were changed to written submissions where both parties duly represented by Counsels duly complied.
5. The Applicants contended that the deceased was not survived by a wife or children but by his brothers and their children who are the Applicants herein. That, the Respondent, who is also a brother to the deceased, instituted the succession proceedings without involving any of the other brothers and upon issuance of the grant he proceeded to confirm it and sold the land in issue to a third party. Aggrieved by the actions of the Respondent, the Applicants sought the revocation of the grant and the setting aside of the confirmation proceedings such that the property known as Suna East/Wasweta I/9238 reverts into the name of the deceased for fresh confirmation to issue.
6. The Respondent contended that the entire proceedings were conducted in the full glare of the Applicants amid several family meetings which even approved the sale of the subject land to the third party. He prayed for the dismissal of the application.
7. I have considered the application alongside the response and the submissions. I have also perused the lower court file on which the grant was issued and confirmed. Whereas it is admitted that the deceased was only survived by his brothers and that the succession was undertaken with the concurrence and involvement of all of them, the position is not supported by the record. Form P&A 5 only lists the Respondent as the only surviving beneficiary. Likewise, the letter from the Chief dated 27/11/2012 does not reveal the other survivors. There is as well no consent either filed on behalf of the other brothers or affidavits of renunciation of their rights in the estate or any citation confirming that all the survivors by their conducts had sanctioned the Respondents to undertake the proceedings. Therefore the contention by the Respondent that all the survivors were party to the said proceedings was not proved and as such fails.
8. The foregone therefore reveal that the proceedings in the lower court were contrary to law in many aspects. **Sections 51 and 71 of the Law of Succession Act**, Chapter 160 of the Laws of Kenya as well as **Rules 7, 26, 40 and 41 of the Probate and Administration Rules, 1980** were severely flouted.
9. That being the position, the Respondent still contended that the sale of the property to the third party was protected by **Section 93 of the Law of Succession Act** and as such the grant cannot be revoked and the confirmation set-aside.
10. This Court has had an occasion and interrogated the said **Section 93(1) of the Law of Succession Act** in detail in **Kakamega High**

**Court Succession Cause No. 18 of 2005 In the Matter of the Estate of Rispah Ngaira Waiganagana (Deceased) (2015) eKLR** under the rubric '**On the Section 93(1) of the Law of Succession**' in paragraphs 15 to 26 inclusive. I still hold the position that a beneficiary of an interest in an estate can lawfully transfer that interest, and nothing more, to a third party. A beneficiary who transcends beyond such borders and otherwise so irregularly deals with the interests of other beneficiaries cannot benefit from the protection in **Section 93(1)** of the **Law of Succession Act**. As to whether the Respondent and the third party come under the said protection is a matter to be dealt with once the confirmation of the grant is revisited.

11. I am hence persuaded that the application is merited, and the remedy thereof is in re-hearing the Summons for Confirmation such that all parties are given an opportunity to take part in the fresh confirmation process. I however do not see the need of revoking the grant more so now.

12. Resulting therefrom and with a view to attain a quicker determination of this matter which undoubtedly involves other beneficiaries and interested parties, this Court now makes the following orders: -

**(a) The confirmation proceedings undertaken before the Migori Senior Resident Magistrates Court in Succession Cause No. 95 of 2012 be and are hereby set-aside and the property known as Suna East/Wasweta I/9238 shall be registered in the name of the deceased herein.**

**(b) The Summons for Confirmation of the Grant dated 04/04/2013 shall be re-heard by way of oral evidence. To that end, the Applicants shall file and serve their protests within 14 days of this ruling and the Respondent shall be at liberty to file any response, if need be, within 14 days of service.**

**(c) The Respondent shall serve the Summons for Confirmation on the purchaser one Samson Ouma Apina within 10 days of this ruling and he will be at liberty to participate in the proceedings. In the event the said Samson Ouma Apina opts to take part aforesaid he shall file and serve his response to the application within 14 days of service.**

**(d) Parties are at liberty to file and serve Witness Statements and Lists of Documents within 14 days of (b) above.**

**(e) A hearing date shall be fixed at the Registry in the month of October 2018.**

**(f) As the matter involves family members and is still on-going, each party shall bear its own costs of the application.**

Orders accordingly.

**DELIVERED, DATED and SIGNED at MIGORI this 12<sup>th</sup> day of July 2018.**

**A. C. MRIMA**

**JUDGE**

**Ruling delivered in open court and in the presence of: -**

**Mr. Odingo** instructed by the firm of Odingo & Co. Advocates for the Applicants/Objectors.

**Mr. Sam Onyango** instructed by the firm of Sam Onyango & Co. Advocates for the Respondent/Petitioner.

**Evelyne Nyauke** – Court Assistant