



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

(CORAM: CHERERE-J)

SUCCESSION CAUSE NO. 725 OF 2014

IN THE MATTER OF THE ESTATE OF JOSHUA ABONG'O OYOSI (DECEASED)

BETWEEN

SABINA AKOTH ONDIWA.....PETITIONER/RESPONDENT

AND

TITUS ONDWARY.....OBJECTOR/APPLICANT

JUDGEMENT

Introduction

1. The deceased, **JOSHUA ABONG'O OYOSI (hereinafter referred to as the deceased)** died on 2nd April, 2007. The deceased's estate comprises of **L.R KISUMU/GEM RAE/103**
2. The petitioner applied for letters of administration which were issued on 17th July, 2015. Before the grant was confirmed, the petitioner on 18th August, 2015 caused **L.R KISUMU/GEM RAE/103** to be transferred to her name.

Application

3. The Notice of Motion before the court is dated 4th April, 2018. The applicant seeks the orders among them revocation of the letters of administration issued to the petitioner on the ground that they were obtained fraudulently and by non-disclosure of all the beneficiaries to the estate.

Applicant's/ Objector's Case

4. The objector testified that he was one of the many grandchildren of **OYOSI OYWOYA** (deceased) the original owner **L.R KISUMU/GEM RAE/103** as shown on green card **PEXH. 1** who died on 23.5.74 as shown by a copy of certificate of death **PEXH. 2**. Objector testified that his grandmother was deceased and his grandfather's 5 children were also deceased. He named them as:

- 1) Noah Odiwa Oyosi (father of objector)
- 2) Ogal Oyosi
- 3) Amollo Oyosi
- 4) Abongo Oyosi (father of petitioner)
- 5) Keke Oyosi

5. The objector further told court that **Abongo Oyosi** (deceased) was given a chief's letter dated 8.11.10 **PEXH. 3** to administer the estate of his late father **Oyosi Oywoya** (deceased) estate but the family later discovered that the **Abongo Oyosi** (deceased) had without filing a succession cause caused **L.R KISUMU/GEM RAE/103** to be transferred to his name on 20.11.97 as shown on the green card marked **PEXH. 1**. That upon the discovery, a case number **LDT 10 OF 1990** against the **Abongo Oyosi** (deceased) was filed at the Land Disputes Tribunal but deceased died before its determination and the Tribunal advised the disputants to file a succession cause and the family

appointed Mariko Olwel, a grandson **Oyosi Oywoya** (deceased) to file the succession cause. The objector told court that in the cause of filing the succession cause, they discovered that the respondent who is daughter of the **Abongo Oyosi** (deceased) had without a grant of letters of administration caused **L.R KISUMU/GEM RAE/103** to be transferred to her name and that's the genesis of this objection.

6. Mariko Olwal Ogal and Milton Onyango Ogal sons of Ogal Oyosi and cousins to the petitioner and the objector supported the objector's case that **L.R KISUMU/GEM RAE/103** was fraudulently transferred to the name of the **Joshua Abongo Oyosi** (deceased) and later to the petitioner.

Petitioner's/Respondent's Case

7. The petitioner conceded that **L.R KISUMU/GEM RAE/103** was originally registered in the name of their grandfather **Oyosi Oywoya** (deceased). She conceded that her father **Joshua Abongo Oyosi** (deceased) caused the land to be transferred to his name. Petitioner/respondent further conceded that she used letters of administration issued to her on 17th July, 2015 and caused the land to be transferred to her name. She acknowledged that she and other grandchildren of **Oyosi Oywoya** (deceased) who include the objector are entitled to the estate of **Oyosi Oywoya** (deceased) comprised in **L.R KISUMU/GEM RAE/103**.

8. Julius Abuto Amollo the son of Amollo Oyosi and Richard Nondo Keke son of Keke Oyosi, cousins to the objector, petitioner, Mariko Olwal Ogal and Milton Onyango Ogal and grandchildren **Oyosi Oywoya** (deceased) told court that the estate comprised in **L.R KISUMU/GEM RAE/103** belongs to the grandchildren of **Oyosi Oywoya** (deceased) and not exclusively to the petitioner.

Analysis and Determination

9. I have considered if the objector/applicant has made out a case for revocation of the letters of administration issued to the petitioner/respondent.

10. **Section 38 of the Law of Succession Act** stipulates how the net intestate shall devolve where intestate has left a surviving child or children but no spouse.

11. In the instant case, parties are in agreement that the spouse and children of Oyosi Oywoya (deceased) are deceased. **Oyosi Oywoya** (deceased) had 4 children **Noah Odiwa Oyosi (father of objector)**, **Ogal Oyosi**, **Amollo Oyosi**, **Abongo Oyosi (father of petitioner)** and **Keke Oyosi** who were entitled to equally share the estate of their father. Consequently, I find that **Joshua Abongo Oyosi** (deceased) intermeddled with the estate by transferring the whole of the estate of the **Oyosi Oywoya** (deceased) comprised in **L.R KISUMU/GEM RAE/103** solely to himself to the exclusion of other beneficiaries. The said **Joshua Abongo Oyosi** (deceased) lacked legal capacity to transfer the suit parcel of land either in whole or in part to himself.

12. Having said that, I also find that the petitioner lacked legal capacity to transfer **L.R KISUMU/GEM RAE/103** either in whole or in part to herself to the exclusion of other beneficiaries.

13. Section 76 of the Law of Succession Act provides as follows:

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion

(b) That the grant was obtained by the making of a false statement or by concealment of from the court of something material to the case

14. The expression "*any interested party*" as used in the foregoing provision, in its plain and ordinary meaning, is in my view wide enough to accommodate any person with a right or expectancy in the estate such as the applicants herein. The applicant is a grandchild of **Oyosi Oywoya** (deceased) comprised the original owner of **L.R KISUMU/GEM RAE/103**. He like all other grandchildren of **Oyosi Oywoya** (deceased) are persons beneficially entitled to a share of the estate of **Oyosi Oywoya** (deceased) now that his children who are their fathers are deceased. I therefore find that applicant has the *locus standi* to present the application for revocation of the grant.

15. From the foregoing analysis; I am satisfied from the facts in this case that the letters of administration which were issued to the petitioner/respondent on 17th July, 2015 were obtained by concealment of material facts and non-disclosure of other beneficiaries interests and on the basis of an untrue allegation that all persons beneficially entitled to the estate had been ascertained and determined.

16. In the result, I find that there is overwhelming evidence to support the applicants' case for revocation of the letters of administration which issued to the petitioner/respondent on 17th July, 2015.

Disposition

17. Consequently, it is hereby ordered **THAT**:

1. Letters of administration which issued on 17th July, 2015 to **SABINA AKOTH ONDIWA**, the petitioner/respondent be and are hereby **revoked**

2. The Land Registrar, Kisumu County is directed to cancel title deed issued in respect of **L.R KISUMU/GEM RAE/103** to **SABINA AKOTH ONDIWA** and revert its ownership **OYOSI OYWOYA**

3. Once ownership of **L.R KISUMU/GEM RAE/103** has reverted to **OYOSI OYWOYA, Mariko Olwal Ogal**, the petitioner in **Kisumu Succession Cause No. 1274 of 2015** in respect of the estate of **OYOSI OYWOYA** alias **Oyosi Oyuoya** shall include it in that cause for purposes of administration and distribution

4. Since this is a family matter, each party shall bear its own costs.

DATED AND DATED IN KISUMU THIS 12th DAY OF November 2018

T. W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Felix

Petitioner/Respondent - Present in Person

Applicant/Objector - Present in Person