



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISUMU
(CORAM: CHERERE-J)
SUCCESSION CAUSE NO. 950 OF 2014
IN THE MATTER OF THE ESTATE OF AGUMBA AWINDA(DECEASED)
BETWEEN
DOMTILLAH AKUMU OKORE.....1ST ADMINISTRATOR/RESPONDENT
AND
SAMSON OTIENO ADORN.....2ND ADMINISTRATOR/OBJECTOR

JUDGEMENT

Introduction

1. **AGUMBA AWINDA** (deceased) died sometimes on 12th March, 1978. Deceased's estate comprised of Land Parcel No. **KISUMU/KADONGO/543**. The deceased's wife was deceased. The deceased's children were

1. OriedoAgumba - deceased (applicant's/objector's father)
2. BodoAgumba - deceased
3. KeziahAgumba - deceased
4. Joseph OkoreAgumba - deceased (Petitioner's/respondents husband)

Letters of administration were issued in favour of Joseph Okore Agumba on 22nd January, 2015.

Application

2. Before the confirmation of the grant, the 2nd administrator/applicant on 9th October, 2015 filed a Notice of Motion for revocation of the grant of letters of administration made under section 76 Rule 4 of the Law of Succession Act (Chapter 160 of the Laws of Kenya).

3. The application was based on the grounds among others that the letters of administration were obtained fraudulently and by concealment of material facts including failure to provide for all beneficiaries of the estate.

4. Joseph Okore Agumba passed on and was subsisted with his wife Domtillah Akumu Okore.

Subsequently, letters of administration were issued in the joint names of Domtillah Akumu Okore and Samson Otieno Adorn on 5th October, 2017.

5. Prior to his death, Joseph Okore Agumba had by summons dated 28th July, 2015 filed on 29th July, 2015 applied for confirmation of grant.

6. In support of the application for confirmation of grant, the 1st administrator/respondent on 8th November, 2017 filed an affidavit sworn on 6th November, 2017. She proposed that the deceased's estate be distributed as follow:-

1. Samson Otieno Adorn s/o Oredo Agumba - 1.09 Ha
2. Penina Adegda daughter in law to Bodo Agumba - 0.95 Ha
3. Domtillah Akumu Okore w/o Joseph Okore Agumba - 0.97 Ha

7. In opposition to the mode of distribution proposed by the 1st administrator/respondent, the 2nd administrator/objector proposed that the deceased's estate be distributed as follows:-

1. Samson Otieno Adorn s/o Oredo Agumba - 3.0 Ha
2. Domtillah Akumu Okore w/o Joseph Okore Agumba - 2.0 Ha

1st administrator's/Objector's Case

8. The 2nd administrator/objector stated that he is entitled to a bigger share of his grandfather's estate on the ground that his deceased father had bought a portion of the said land. He further stated that deceased had several grandchildren as listed on his affidavit filed on 18th October, 2018. Collins Cleophas Tuju, a grandson to Oriedo Agumba stated that he is the only one that lives on deceased's land and that he occupies only ½ acre because the other part is fenced off.

2nd administrator's/Respondent's Case

9. In support of her mode of distribution, the 1st administrator/respondent denied that the late Oriedo Agumba had bought a portion of deceased's estate. She further stated that she had been cultivating the land forming the estate of the deceased.

Analysis and Determination

10. **Section 39 of the Law of Succession Act** stipulate how the net intestate shall devolve to the kindred of the intestate in manner of order of priority in the following terms:-

(1) Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority-

(a) father; or if dead

(b) mother; or if dead

(c) brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none

(d) half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters, in equal shares; or if none

(e) the relatives who are in the nearest degree of consanguinity up to and including the sixth

degree, in equal shares.

(2) Failing survival by any of the persons mentioned in paragraphs (a) to (e) of subsection (1), the net intestate estate shall devolve upon the State, and be paid into the Consolidated Fund.”

11. In the instant case, parties are in agreement that the deceased's 4 children are deceased. Domtillah Akumu Okore is wife to one of the deceased's children. The others are survived by their children, the deceased's grandchildren who include Samson Otieno Adorn, great grandchildren and daughters and sons in law.

12. The four children of the deceased are, unless the contrary is proved, entitled to equal share of deceased's estate which shall devolve to their respective families now that the flowing four children are themselves dead. The 2nd administrator/objector has not demonstrated that his father bought a portion of deceased's estate and his claim for a bigger share of the estate is therefore rejected.

13. The mode of distribution proposed by the 1st administrator/respondent does not justify why some of deceased's children's families should get a bigger share as compared to others. Of interest to note however is that neither the 1st administrator/respondent nor the 2nd administrator/objector makes provision for the descendants of Keziah Agumba, deceased's daughter, who is also deceased.

14. In view of the foregoing:

1. The co-administrators are directed to within 21 days from today's date, file joint or separate modes of distribution incorporating the descendants of the 4 children of the deceased and ascertaining their respective shares to the estate as much as they possibly can

2. It is so ordered

DATED, DELIVERED AND SIGNED THIS 1st DAY OF November 2018

T. W. CHERERE

JUDGE

READ IN OPEN COURT IN THE PRESENCE OF-

Court Assistant	- Felix
1st administrator/respondent	- Ms Baguasi
2nd administrator/objector	- Ms Kagoya