

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

PROBATE & ADMINISTRATION CAUSE NO. 90 OF 2007

IN THE MATTER OF THE ESTATE OF BERITA KHAVETSA (DECEASED)

MOSES CHARLES ORIKO.....PETITIONER

VERSUS

FRANCIS ORIKO OMUKUYA.....OBJECTOR

RULING

[1] The application dated **5 December 2014** was filed herein on **8 December 2014** by the law firm of **M/s Kigen and Company Advocates** on behalf of the Objector, **Francis Oriko Omukuya**, who has since died. The application was filed pursuant to **Section 74** of the **Law of Succession Act, Chapter 160** of the **Laws of Kenya** and **Rule 4** of the Probate and Administration Rules for orders that the Objection dated **8 October 2007** be rectified; that the Objector's name, **Francis Omukuya Oriko**, be deleted from the application and be replaced by **Joseph Muzee Oriko**; and that the Objection proceedings to the estate of the late **Berita Khaveta Oriko** (deceased) be heard and determined on merit.

[2] The application was supported by the affidavit of **Joseph Muzee Oriko** in which it was averred that the Objector is now deceased and therefore that there is need for substitution to facilitate the disposal of the Objection application. He annexed to the said affidavit a copy of the Limited Grant of Letters of Administration *Ad Litem* in respect of the estate of **Francis Oriko**, authorizing him to attend to the interests of the deceased herein, as well as the deceased's Certificate of Death. It was therefore the contention of the Applicant that it is necessary for the orders sought to be granted to facilitate the expeditious disposal of this longstanding matter.

[3] The application was opposed by the Petitioner, **Moses Charles Oriko**, vide his Replying Affidavit sworn on **2 November 2017**. His posturing was that the orders sought are untenable, there being no dispute that the Objector is now deceased and that there is no surviving cause of action. According to the Petitioner, the property that is the subject of this Succession Cause belonged to his mother **Berita Khavetsa Oriko** and not his father. He urged for the dismissal of the application with costs.

[4] I have considered the application and the affidavits filed in respect thereof as well as the submissions made herein by Learned Counsel for the parties. I have also perused the record and note that the hearing of the Objection application had commenced on **19 October 2009** but stalled on account of the demise of the Objector, which death is not in dispute. In the premises, the interests of justice would require that the application be allowed to enable the parties move the matter forward, noting that the reasons given by the Petitioner are matters that would best be canvassed in the Objection Proceedings.

[5] In the result, I would allow the application dated **5 December 2014** and would grant orders in respect thereof as follows:

[a] That the objection dated **8 October 2007** be rectified;

[b] That the Objector's name, **Francis Omukuya Oriko**, be deleted from the Summons for Revocation of Grant issued on **8 October 2007** and be replaced by **Joseph Muzee Oriko**; and

[c] That the Summons for Revocation to the estate of the late **Berita Khaveta Oriko** (deceased) be heard and determined on merit should the parties fail to reach a settlement in respect thereof.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 13TH DAY OF DECEMBER, 2018

OLGA SEWE

JUDGE