



REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
SUCCESSION CAUSE NO. 117 OF 2014
IN THE MATTER OF THE ESTATE OF
JANE ATIENO OLANG (DECEASED)
AND IN THE MATTER OF APPLICATION BY
BETWEEN
JANE AUMA OYUGIAPPLICANT

AND

DOROTHY AKINYI AGENDOPROTESTOR

RULING

1. The application before me today is a summons for confirmation of grant dated 29th July 2016. The petitioner seeks to confirm the grant issued to her on 9th June 2014 in respect of the estate of Jane Atieno Olang.
2. It is not in dispute that Jane Atieno Olang died on 14th June 1997. She left behind three children; Simeon Omondi Olang, Lucas Odhiambo Olang and Kenedy Olang. Jane Auma is a sister in law to the deceased having married John Oyugi Hongo who was the brother in law to the deceased. In the petition for the letters of administration, the petitioner stated that the estate comprised of two parcels of land; Kisumu/Ojola/3973 ('Plot 3973') and Kisumu/Ojola/3974 ('Plot 3974'). It is not in dispute the plots were originally part of Kisumu/Ojola/643 which belonged to Jacob Hongo Owang, her father in law and husband to the deceased. The deceased succeeded him in ***Kisumu High Court Succession Cause No. 144 of 1994***. Thereafter Plot 643 was subdivided into Plots 3973 and 3974.
3. In due course the grant issued in this matter was confirmed with Jane Auma Oyugi taking the whole of Plot 3974 while Lukas Odhiambo and Simeon Omondi shared of Plot 3973 equally.
4. When the petitioner attempted to register the certificate of confirmation, she discovered that Plot 3974 was registered in the name of Dorothy Akinyi Agendo. She applied for rectification of the certificate of confirmation but I declined the application and ordered her to file a fresh application for confirmation after I revoked the earlier grant.
5. The summons for confirmation of grant was filed and duly served on Dorothy Akinyi Agendo who filed an affidavit of protest. I heard the matter by *viva voce* evidence and it turned out that the only issue for determination is whether Plot 3974 is part of the deceased's estate.

6. The collective evidence of Dorothy Akinyi Agendo (DW 1) and Naftali Otiende (DW 2) is that prior to her death, the deceased sold Plot 3974 to DW 2 in 1997 and the transfer in his favour registered on 26th March 1997 whereupon he was issued with a certificate of title. He thereafter sold the plot to Dorothy Akinyi Agendo and who became the registered proprietor on 18th June 1999.

7. The petitioner's contention is that the land was sold in suspicious circumstances as it is not possible that the deceased would not have told her about the sale. In any event, she testified that it is the deceased who told her to build her house on Plot 3974 and it is where she buried her husband.

8. It is my duty is to determine whether Plot 3974 is free property of the deceased subject to distribution. Dorothy Akinyi Agendo has acquired a clear title that cannot be impeached unless fraud is proved against her and since she has the title to Plot 3974, the property is not part of the free property of the deceased and I so declare.

9. The only property that is part of the deceased's estate is Plot 3973 and Plot 4196. During the proceedings, it emerged that the deceased's son, Lucas Odhiambo Olang (deceased), had children who have not been disclosed. In the circumstances, I decline to confirm the grant absent full disclosure as they are beneficiaries.

10. I note that the petitioner believes that her house is on Plot 3974 while the DW 1 and DW 2 testified that the plot is fenced, has mature trees and is being cultivated by DW 1. DW 1 told the court that the petitioner's house is outside Plot 3974. This evidence suggests that there is a misunderstanding of the boundaries which is a matter that can be resolved elsewhere.

11. The Summons for revocation of grant dated 29th July 2016 is dismissed with no order as to costs. The petitioner is at liberty to file another application in light of the findings I have made.

DATED and DELIVERED at KISUMU this 4th day of April 2017

D. S. MAJANJA

JUDGE

Applicant in person.

Mr Njoga instructed by Ouma Njoga and Company Advocates for the protestor.