



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

SUCCESSION CAUSE NO. 52 OF 2009

IN THE MATTER OF THE ESTATE OF DESTERIO BARASA OKIRING.....DECEASED

AND

MARGARET WANJIKU MARIGE.....PETITIONER

VERSUS

ROFINA OKIRING.....OBJECTOR

RULING

1. The litigation between Rofina Okiring (The Objector) and Margaret Wankiku Marige (The Petitioner) has come some way and involves four Court proceedings.
2. The earliest would be a citation (Busia High Court Succession Cause no. 73 of 2007) in which the Petitioner challenged the Objector to Accept or Refuse to take out Grant of Letters of Administration in respect to Desterio Barasa Okiring (The Deceased). The Deceased is the husband of the Objector. Those proceedings were compromised by the following order on 5th November 2009:-

1. **That the citation dated 17.7.2007 be allowed.**
2. **That the respondent be given 90 days to file a succession cause on the estate of her late husband Desterio Barasa Okiring and in default of so doing the Citor be given leave to file the same.**
3. **That this matter be mention on 6.10.2008 to see if the succession cause will be filed.**
3. On 15th September 2008, the Objector herein presented a Petition for Letters of Administration Intestate in respect to the Estate of Deceased being Busia High Court Probate and Administration Cause No. 158 of 2008. Grant of Letters was made to the Objector on 3rd June 2009. The Proceedings for Confirmation have met a protest filed by the Petitioner on 19th August 2010. The Petitioner wants LR No. South Teso/ Angoromo/4197 included in the Petition and to devolve upon her.
4. On 9th March 2009, the Petitioner, presented this Petition, again, in respect to the Estate of the Deceased and not only obtained Grant on 1st December 2009 but also Confirmation of it on 16th September 2010. That has displeased the Objector who filed a Summons for Revocation of Grant on 18th September 2014 seeking the following orders;
 - a. **That this Honourable Court be pleased to revoke the Grant of Letters of Administration granted herein to Margaret Wanjiku on 1.12.2009 and confirmed on 16.9.2010.**
 - b. **That a fresh Grant of Letters of Administration Intestate be issued to Rofina Okiring**

c. **That costs be grounded for.**

5. The fourth litigation is a Civil Suit being Busia Principal Magistrates Court Civil Suit No. 55 of 2010 Margaret Wanjiku Marige vs Rofina Okiring which was commenced on 9th February 2010. There the Petitioner (the Plaintiff) seeks the following orders against the Objector (The Defendant)

- a. **An order that the defendant transfers to the Plaintiff 4 acres of land from LR No. South Teso/ Angoromo/4197 and or refund of the purchase price**
- b. **Costs of this suit**
- c. **Interest**
- d. **Any other relief this Honourable Court deems just and fit to grant.**

6. By consent of Counsel for the parties, it was agreed that this Courts determination of the Summons of 18th September 2014 do abide protest in P & A 158 of 2008. And that makes sense as the two are related and involve the same issues!

7. My answer to the matter before me must necessarily be brief. It is conceded by the Petitioner that her interest herein is that of Purchaser. And it is not contested that as the Widow of the Deceased, the Objector would normally have first priority in taking out Letters of Administration to her Deceased Husband's Estate (Section 66 Law of Succession Act).

8. The reason given by the Petitioner for taking out Letters is that the Objector had in defiance of the order made in the Citation Proceedings, excluded the Petitioner's liability interests in the Deceased's estate.

9. The final Orders in the Citation read as follows:-

- a. **That the citation dated 17.7.2007 be allowed.**
- b. **That the Respondent be given 90 days to file a succession cause on the estate of her late husband Desterio Barasa Okiring and in default of so doing the Citor be given leave to file the same.**
- c. **That this matter be mention on 6.10.2008 to see if the succession cause will be filed.**

The Objector ought to have presented her Petition by 6th August 2008 and was therefore outside the time set out by Court when she commenced P & A 158 of 2008 on 15th September 2008. In a sense therefore the Petitioner was entitled to move Court herself.

10. What is troubling is that by the time of accepting the Grant of Letters herein and moving the Court for their Confirmation on 13th August 2013, the Petitioner was well aware that the Objector had already commenced Succession Cause No. 158 of 2008. This is revealed by the contents of her lawyer's letter of 17.11.2009 to the Objector's lawyer. The letter is reproduced below:-

Bogonko Otanga & Co. Advocates

Busa Town Hall 1st Floor, Room 42

P.O. Box 766 - 50400

BUSIA (K)

Dear Sir

RE: BUSIA HC SUCC CAUSE NO. 158 OF 2008

IN THE MATTER OF THE ESTATE OF DESTERIO BARASA OKIRING

By consent is Misc Appl. No. 73 of 2007 a copy of which is hereto annexed and whereby our client Margaret Marige was the Citor and your client Rofina Okiring the

Respondent, it was agreed that your client do file a succession cause to the Deceased's estate within 90 days from the 6.5.2008 and our client be enlisted as a liability in terms of purchase.

We note that you have filed a succession cause cited above and left out our client. We seek that an application be made to enjoin her as a purchaser.

Confirm.

Yours faithfully

ASHIOYA & CO. ADVOCATE (my emphasis)

11. When accepting the Grant herein and applying for Confirmation, the Petitioner was pressing on with her own proceedings well aware that there were already other proceedings, filed earlier, in respect to the same Deceased. This would be both untidy and unlawful! Whatever she thought of the Objector's Petition, she ought to have sought that they be struck out first before seeking confirmation of her Grant. Secondly she failed to disclose the existence of the parallel proceedings. I agree with Counsel for the Objector that the disclosure was material at the time she was applying for Confirmation.
12. The claim by the Petitioner is that she bought 4 acres (now designated South Teso/Angoromo/4197) from the Deceased person. Her claim is that of a purchaser and not a dependant. And as her claim is not recognized by the Objector she would have to pursue it as a Civil Claim. And the Petitioner is well aware that a Civil Claim is the correct course. She has filed Civil Suit No. 55 of 2010 against the Objector where she names the Objector as the Administratrix to the Estate of the Deceased (unwittingly a recognition that it is the Objector and not her who should be the Administratrix to the Estate of the Deceased) She seeks the following orders in that suit-

a. An order that the Defendant transfers to the Plaintiff 4 acres of land from LR No. South Teso/Angoromo/4197 and/or refund of the purchase price.

b. costs of this suit

c. Interest

d. Any other relief this Honourable Court deems just and fit to grant.

A final determination of the Petitioner's interest to the land will have to be made in the Land Case.

13. The Petitioner's stance of presenting the Petition herein and protesting the Objector's Petition is not well advised. The Summons for Revocation dated 18th September 2014 is hereby allowed and the Protest dated 18th August 2010 is dismissed. The Objector shall have costs.

Dated, signed and delivered at Busia this 1st day of February 2016.

F. TUIYOTT

J U D G E

In the presence of:-

Oile – C/Assistant

Makokha h/b for Achola- for Petitioner

Otanga - for the Objector