



REPUBLIC OF KENYA

IN THE HIGH COURT AT KISUMU

SUCCESSION CAUSE NO. 179 OF 2009

IN THE MATTER OF THE ESTATE OF JAMES AKOTH NDONGA (DECEASED)

AND IN THE MATTER OF

AND APPLICATION BY

CONCILATA AKINYI AKOTH

MARY ATIENO AKOTH

CONSOLATA AKINYI AKOTH

RULING

1. **JAMES AKOTH NDONGA** died on 31st May 2008. He left behind three widows, Concilata Awar Akoth, Mary Atieno Akoth and Consilata Akinyi Akoth. They all applied for grant of letters of administration intestate and the same was issued on 22nd May 2009 to the three widows.

2. Unfortunately, the estate was wrought with disputes when the summons for confirmation dated 16th October 2016 was filed. During the hearing it emerged the deceased had prepared a will. The will was produced in court. I directed that the advocate who prepared the will, Mr. Moses Orengo and the witness, Gerphas Odhiambo, do appear in court to confirm its authenticity.

3. Both Mr Orengo and Mr Odhiambo attended court and confirmed that the will is the true and correct will the deceased prepared. All the family members did not contest the will. The dispute appeared to arise from the distribution of properties that were not part of the will or which the deceased had disposed after preparing the will.

4. Accordingly, it is apparent that these proceedings have been moving on a wrong track. As Gerphas Odhiambo is one of the executors appointed by the will and is prepared to act, I will appoint him.

5. As this matter has been in court since 2009 and in order to bring about its resolution, I order as follows:

(1) The grant issued to Concilata Awala Akoth, Consilata Akinyi Akoth and Mary Atieno Akoth is hereby revoked forthwith.

(2) A grant of probate for the deceased's will dated 13th February 1997 is hereby issued to GERPHAS ODHIAMBO ABONGO who is now appointed the executor.

(3) As there appear to be other properties of the deceased outside the will, a grant of letters of administration is also issued to the said GERPHAS ODHIAMBO ABONGO.

(4) The executor/administrator shall apply for confirmation within 30 days.

(5) Mention on 5th December 2016 for directions.

DATED and DELIVERED at KISUMU this 5th day of October 2016

D. S. MAJANJA

JUDGE