



REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
SUCCESSION CAUSE NO. 469 OF 2014
IN THE MATTER OF THE
ESTATE OF THE LATE OLARE TANA (DECEASED)

AND

IN THE MATTER OF REVOCATION/NULIFICATION OF GRANT OF LETTERS
ADMINISTRATION

AND

IN THE MATTER OF LR NO. KANYAMKAGO/KAWERE I/90

BETWEEN

JOHN OYOO OLAREAPPLICANT

AND

JOSEPH OREYO TANA 1ST RESPONDENT

GABRIEL ALUGA TANA2ND RESPONDENT

RULING

1. The matter before me concerns the estate of **Olare Tana** who passed away on 10th July 1972. It is only in 1995 that the family decided to take out an application for the grant of letters of administration intestate in *Migori SPM Court Succession Cause No. 15 of 1995*. In light of the directions I am about to give, I will outline the background of the matter.
2. The grant of letters of administration intestate was issued on 8th May 1996 to **Joseph Oreyo Tana** and **Gabriel Aluga Tana**. The grant was confirmed on 23rd October 1998 on terms that the only property of the deceased being **KANYAMKAGO/KAWERE I/90** devolved wholly to the administrators jointly.
3. What precipitated these proceedings is a summons for revocation of grant of letters of administration in respect of the deceased's estate by **John Oyoo Olare** dated 4th November 2014. John Oyoo Olare is the sole surviving son of the deceased.

4. From his deposition in support of the summons, the applicant states that the administrators were brothers of the deceased and that the deceased ought to have been succeeded by his true heirs who were not disclosed. He also states that as a son of the deceased he was not notified of or consent to the application made in court. He alleges fraud on the part of the applicants in transferring the property to themselves to the exclusion of the real heirs. He also avers that the subordinate court lacked jurisdiction to deal with the estate of the deceased as the property, measuring 35.5 Ha (approximately 88.75 acres), has a value in excess of Kshs. 100,000.00.
5. When this matter first came up for directions inter-parties on 14th November 2014, I directed the parties to seek an amicable solution due to the fact that the deceased died in 1972. Under **section 2** of the **Law of Succession Act (Chapter 60 of the Laws of Kenya)**, the matter is governed, not by the Act, but by the customary law as the deceased died before 1981 which is the year the Act came into force. I considered that it would be most appropriate for the matter be discussed at the level of elders who are very well versed with matters of customary law and in particular succession and who had knowledge of events in the early 1970s. I also informed the parties that if no settlement was reached, I would refer the matter to the elders for resolution under the guidance of the relevant District Officer.
6. When the matter came up today, 5th March 2015, for directions, Mr Kisera, counsel for the respondents and other interested parties, produced a report of the meetings held on 18th January 2015 and 11th February 2015 amongst family members and the clans involved. It would be important to highlight some background from the report which was recorded thus;

After deliberations, it was found that TANA had five (5) sons. His sons were: (1) Olare Tana (2) Aluga Tana (3) Oreyo Tana (4) Aduda Tana and (5) Nyakado Tana, all have died except Oreyo Tana who is still alive.

Nyakado died without any child to inherit his wealth, hence the scramble for his land by some of his nephews.

It was found that before Tana died, he gave, his eldest son the responsibility of administration on the parcel LR No. Kanyamkago/Kawere I/90. After his death, Olare and his other 4 brothers agreed to sub-divide the parcel Kanyamkago/Kawere I/90 to enable each of them develop his own portion. They have lived peacefully on their pieces of land as given by Olare until they all died except Joseph Oreyo who is still alive.

The problem is now being raised by the grandchildren of TANA, that they should be divided equally, but Olare and his brothers have lived peacefully without any land differences.

It was also noted that the five (5) brothers have their common boundaries and none of them was criss-crossing in one another's land, those boundaries are very visible.

7. What is apparent from the report is that the deceased was a trustee for his brothers and the land had been subdivided and indeed all the brothers had settled on identifiable parts of the property. The applicant does not admit that any settlement of the issues has been reached on the matter and he takes a contrary view. He shall of course be heard on any objections at the appropriate time.
8. What I perceive though, is that family members want to secure the parts of the property which they occupy. While I am entitled to revoke the grant for the various reasons advanced by the applicant, I am also alive to the realities of this case particularly since the deceased died over 40 years ago and the grant was confirmed 17 years ago and it involves a large family that continues to multiply.
9. The directions I am giving in the matter are also influenced by the fact that I have seen the parties who come to court. Most of them are very old and frail and it would be in the interests of justice

that this matter is dealt with it when people with clear memories of the issues are still available. Furthermore this matter, being one that concerns land, should be resolved expeditiously in order to forestall future land disputes.

10. As I stated earlier, the applicable law in this matter is customary law and in light of my obligation to promote alternative dispute resolution under **Article 159** of the Constitution and in view of the facts I have outlined, I direct as follows;

- a. **The issue of LAND PARCEL NO. KANYAMKAGO/KAWERE I/90 and who are the heirs/descendants of the deceased and occupants thereof shall be arbitrated by the District Officer Oyani Division assisted by Local Elders.**
- b. **The District Officer together with the Clan Elders shall come up with a map showing the parts occupied by each person and a mutation sketch map prepared with assistance of the District Land Registrar, Migori County.**
- c. **All the parties herein shall give the District Officer and the Elders all necessary assistance to resolve the matter.**
- d. **The matter shall be mentioned on 17th April 2015 to confirm progress on the same and for any further orders.**

DATED and DELIVERED at MIGORI this 5th day of March 2015.

D.S. MAJANJA

JUDGE

Mr Nyagwencha instructed by Oguttu-Mboya & Company Advocates for the applicant.

Mr Kisera instructed by Omonde Kisera and Company Advocates for the respondents.