



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

SUCCESSION CAUSE NO 281 OF 2006

IN THE MATTER OF THE ESTATE OF ISAAC OLE OIYIE (DECEASED)

MARY WANGUI OIYIE.....PLAINTIFF

VERSUS

PHYSLIS WANGUI OIYIE DEFENDANT

RULING

1. Isaac Ole Oiyie, the deceased to whose estate these proceedings relate died intestate on 11th May 1998. The widow Phyllis Wangui Oiyie applied for grant of letters of administration which were issued to her by this court on 25th November 1998 and later on confirmed on 11th March 2014 for Phyllis and her children. The same listed the deceased's assets as Plot No.224 Narok Town, Plot No. 462 Narok town (Now plot No.226) block 6, Plot No. 131 Narok Town (Now plot No. 160) block 2 and L.R. No. C is Mara Rotian/178. Mary Wangui on 10th February 2006 sought to revoke the said grant of letters of administration on grounds that she and her children were dependents of the deceased and had been left out of as beneficiaries in the said grant of letters of administration. Justice Onyancha on 17th February 2009 allowed the application revoking the said grant of letters of administration and held that Mary Wangui Oiyie was the 1st wife of the deceased and no evidence had been adduced that the deceased had divorced her or abandoned his children. He advised the parties to meet discuss and agree on distribution of the deceased's estate. Subsequently a grant of letters of administration was issued to Mary Wangui Oiyie and Phyllis Wangui Oiyie on 17th February 2009 and subsequently confirmed on 11th March 2014 with Phyllis Wangui Oiyie and her children taking up Plot No. 224 Narok Town and L.R. Cis Mara Rottian/178 while Mary Wangui and her children were get Plot No. 462 Narok Town (Now plot No.226) Block6 and Plot No.131 Narok Town (Now Plot No. 160) Block 2.

2. The application is dated 16th June 2014. The applicant seeks the honorable court to recall and order for cancellation of the certificate of confirmation of grant issued on 11th March 2014 and to order the beneficiaries to appear before the Honorable Court for listing of the deceased's assets of the deceased afresh and distribution of the same.

3. The applicant claims to have been the only wife to the deceased. She has adduced a marriage certificate No. 71910 which indicates that the parties were married under customary law but later solemnized the said marriage at the district Commissioner's office on 15th December 1997. She blames the advocate stating that she was informed that there was a grant issued in her name and those of Mary Wangui Oiyie and on confirmation vested her properties on Mary Wangui Oiyie who has proceeded to take rent from the rental houses she constructed long after the death of her husband. She claims that she relies on the

rental proceeds for her livelihood and stands to suffer irreparably. Mary Wangui has also taken photos of where she lives and states the same forms the deceased's property. She states that Narok/Chisimara/Enablilenegetia/101 where Mary Wangui Oiyie belongs to Wanga Ole Oiyie and is the only one that should form part of the deceased's assets.

4. The respondent filed an objection to the said application stating that the application was incompetent and that the applicant has not made out a prima facie case and that the orders sought were beyond the jurisdiction of this court and the same are incapable of being granted. That the applicant has not come to court with clean hands.

5. The matter came for hearing on 22nd December 2014 and parties made oral submissions. Mr. Kabiru for the applicant argued that the application was not challenging the decision of Justice Onyancha but the mode of distribution used. They say that plot no. 131 in in block 2 and no.1 that the plots have changed numbers. All the applicant seeks is to have the proper estate of the deceased ascertained and requests that the court orders parties to appear in court with the original documents to achieve this.

6. In regards to Plot no. 226/block 6, the respondent has sale agreement dated 21st March 2003 between the Phyllis Oiyie and Notice of transfer of the said property to the applicant from Koikeken Ole Mayone. There is also a letter from the Town Council of Narok dated 23/7/2008. There are receipts for payment of Rates for the year 2011-2012. On plot no.160 block 2, there is a letter from Narok Town Council dated 7th June 1999 indicates that Phyllis Oiyie was allocated the said plot by the Town council. There is receipt for payment of rates for year 2011-2012 dated 29th October 2012. From the evidence adduced it appears that there are no copies of the title documents relating to the parcel of land said to belong to Phyllis Oiyie or the deceased. In this regard I find that the evidence before me is insufficient to lead me to give a decision on issue of what properties form the deceased's estate at this interlocutory. I find that this Court needs to hear the parties viva voce and parties need to avail the appropriate copies of the title documents to the said properties to enable this Court make a determination of this matter on the listing of the assets forming the estate of the deceased and distribution of the same if need be.

7. I cannot re-evaluate the issue of Mary Wangui Oiyie being a wife as the same was ably dealt with by Justice Onyancha any issues on the same should lie as a matter of appeal with the Court of Appeal. Costs shall be in the cause. Orders accordingly.

Dated, signed and delivered this **6th** day of **March** 2015.

R.E. OUGO

JUDGE

In the presence of:-

.....For the Applicant

.....For the Respondent

.....Court Clerk