



REPUBLIC OF KENYA

IN THE HIGH COURT AT MIGORI

SUCCESSION CAUSE NO. 60 OF 2014

(Formerly Rongo SRM Succession Cause No. 78 of 2011)

IN THE MATTER OF THE ESTATE OF SAMUEL AYIETA OTIENO

(DECEASED)

AND

IN THE MATTER

BETWEEN

JACKSON JORAM OCHIENG

WILLIAM ODERA AYIETA

JANE ATIENO AYIETA APPLICANTS

AND

JOSEPH KAMWERU MENGA

HARON ODHIAMBO AYIETA..... RESPONDENTS

RULING

1. This matter concerns the estate of Samuel Ayieta Otieno who died on 21st March 2006. During his lifetime he had four wives; Eunice Adhiambo Ayieta, Agneta Ochieng Ayieta, Rael Magige Ayieta and Florence Aoko Ayieta. Joseph Kamweru Ayieta, Jackson Joram Ochieng and Haron Odhiambo Ayieta applied for the grant of letters of administration in ***Rongo SRM Succession Cause No. 78 of 2011***. A grant was issued to the administrators on 4th July 2011.
2. After the grant of letters of administration was issued, the administrator proceeded to subdivide **KANYAMKAGO/KAWERE I/1695** amongst the beneficiaries. The property was subdivided in Plots no. 1955, 1956, 1957, 1958 and 1959. It is the subdivision precipitated the filing of an application for revocation of the grant by Christopher Okeyo Ayieta. He alleged that all survivors of the deceased had not given consent to the proceedings and that the entire process of application was fraudulent.
3. When the matter came up before me on 15th September 2014, I ruled as follows;

I have perused the original file being Rongo SRM Succession Cause No. 78 of 2011, Re Estate of Samuel Ayieta Menga Otieno alias Samuel Ayieta Otieno. Although a grant of representation was made and issued on 4th July 2011 to Jackson Joram Ochieng and Joseph Kamweru Menga has not been confirmed to date. It is therefore not clear how the deceased properties Kanyamkago/Kawere I/ 1955, 1956, 1957, 1958 and 1959 have been subdivided or is proposed to be subdivided without a certificate of confirmation of grant. I therefore revoke and annul any subdivision of the property of the deceased

4. Thereafter on 19th September 2014, I made the following ruling;

Further to my ruling of 15th September 2014, it is clear that the only issue remaining is the appointment of administrators of the deceased's estate. The deceased had four houses which should be represented. As I understand, the main concern of the objectors is the distribution of the property. In order to proceed with the matter, I direct that a grant of letters of administration shall issue to Joseph Kamweru Menga, Charles Okach Ayieta and Christopher Okeyo Ayieta. The administrators or any of them shall file an application for confirmation within 30 days from the date hereof.

5. After the grant was issued, the parties appeared in court on 4th and 7th November 2014 and informed the court that the family members had reached an agreement on how the property should be subdivided. They agreed that the sub-division was based on the manner in which the deceased had been subdivided property and allocated portions to his wives before he died. Based on this understanding, the deceased's children had already settled on their respective portions.
6. The agreement filed in court on 7th November 2014 provided as follows;
- a. The 1st house comprising Joseph Kamweru Menga, Harun Odhiambo Ayieta, Jackson Ochieng Ayieta, Peleg Karioki Ayieta (deceased) and William Ayieta would all share Plot. 1956 equally.
 - b. The 2nd house comprising Charles Okach Menga, Samson Ochieng Ayieta and Philip Onyango Ayieta would share Plot No. 1957.
 - c. The 3rd house comprising Christopher Okeyo Ayieta, Jacob Odhiambo Ayieta, Lucas Ochieng Ayieta and Reuben Oyugi Ayieta would share Plot No. 1958.
 - d. The 4th house comprising Stephene Odiwuor, Boaz Odhiambo Ayieta and Elias Odoyo Ayieta would share Plot 1959.
 - e. According to the agreement, "*The family agreed to surrender the benefits of parcel No. 1955 to Joseph K. Menga and Harun Odhiambo Menga as an expenditure incurred during the succession process.:*"
7. The members of the 2nd, 3rd and 4th houses were largely in agreement except William Odera Ayieta, Jackson Joram Ochieng and Jane Atieno Ayieta w/o Peleg Ayieta from the first house who objected to the distribution on the ground that Joseph Menga and Harun Odhiambo were not entitled to Plot No. 1955. As a result of the objection, I directed the parties to file affidavits to deal with the issue whether Joseph Kamweru Menga and Harun Odhiambo were so entitled to the parcel. The parties filed affidavits and gave oral testimony.
8. Joseph Menga, who is the first born of the family, testified that before his death, the deceased subdivided that property amongst his four wives and had indeed filed an application for subdivision as evidence by the mutation form dated 1st October 1997 (Exhibit No. 1). He stated that when the family sat down to discuss the subdivision, they all agreed that the land should be divided in accordance with the wishes of their father and that the Plot No. 1955 should be given to those who had incurred expenses in the subdivision. This position was also supported by his brother Harun Odhiambo.
9. William Ayieta, Jackson Joram Ochieng and Jane Atieno Ayieta all agreed that the deceased had

subdivided his property amongst his wives prior to his death. Their point of departure was that there was no agreement amongst the family members that Joseph Menga and Harun Odhiambo were entitled to Plot No. 1955. William Ayieta testified that it was agreed that the said parcel would be cultivated and the proceeds thereof would be used to meet the expenses of administering the estate. He stated that it was the intention of his father that the parcel would be distributed among members of the first house so that they would all have an equal share of the property.

10. I have considered the affidavits and testimony and as I have stated, the only issue for consideration is whether there was an agreement between the family that Plot No. 1955 would be given to Joseph Menga and Harun Odhiambo for expenses incurred in administering the estate. I have looked at the agreements filed in court and they are made between the four administrators. While the members of the 2nd, 3rd and 4th houses are in agreement on the mode of distribution, the three objectors from the first house clear that no such agreement was reached. Hence I cannot impose the distribution on the objecting parties.

11. It therefore falls on this court to do what is just and fair in the circumstances. Joseph Menga and Harun Odhiambo have stated that the reason why they were granted Plot No. 1955 was that they have incurred expenses in administering the estate. They did not account for or indicate the amount they spent so that provision for the expenses can be made. In any case, it is the duty of the administrators to account to the court for expenses incurred in administration when called upon to do so. It is therefore difficult for this court to take the same into account. In my view, to grant the two beneficiaries 6.5 acres would be wholly disproportional to the any costs incurred in administration. I therefore direct that Plot No. 1955 be shared equally amongst the members of the first house.

12. I therefore direct that the grant of letters of administration issued in respect of the estate of the deceased be confirmed on the following terms;

KANYAMKAGO/KAWERE I/ 1955 and 1956 in equal share amongst

- a. Joseph Kamweru Menga
- b. Harun Odhiambo Ayieta
- c. Jackson Joram Ochieng
- d. William Odera Ayieta
- e. Jane Atieno Ayieta

KANYAMKAGO/KAWERA I/ 1957 in equal shares amongst

- a. Charles Okach Menga
- b. Samson Ochieng Ayieta
- c. Philip Onyango Ayieta

KANYAMKAGO/KAWERE I/1958 in equal shares amongst

- a. Christopher Okeyo Ayieta
- b. Jacob Odhiambo Ayieta
- c. Lucas Ochieng Ayieta
- d. Reuben Oyugi Ayieta

KANYAMKAGO/KAWERE I/1959 to be held in equal shares amongst

- a. Stephene Odiwuor
- b. Boaz Odhiambo Ayieta
- c. Elisa Odoyo Ayieta to be held in trust by Florence Aoko Ayieta and Stephene Odiwuor

13. As this is a family matter, each party shall bear his or her own costs.

DATED and DELIVERED at MIGORI this 7th day of April 2015.

D.S. MAJANJA

JUDGE