



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

SUCCESSION CAUSE NO. 918 OF 2013

IN THE MATTER OF THE ESTATE OF DANIEL OMOLO OMBUAR

ALIAS OMOLO OMBARI DECEASED

BETWEEN

HERENIA OTIENO ODINGA ADMINISTRATOR

VERSUS

JULIUS WAGA SAKA OBJECTOR

(Being an Application for Objection of Grant)

RULING

The deceased to whose estate these proceedings relate is Daniel Omolo Ombuar alias Omolo Ombari who died on 17th August 2002 domiciled at Ramula sub-location in Gem District. The dispute before this Court is who between Herenia Otieno Odinga – the Petitioner and Julius Waga Saka, the Objector should get letters of administration the deceased having died intestate.

At the hearing of the objection proceedings the Court heard that the Petitioner is the sister in-law of the Objector and that the deceased was their late father's brother. On her part the Petitioner contends that she is the one entitled to the grant of letters of administration as the deceased had bequeathed this land to her in his lifetime. She testified, and her evidence was supported by five witnesses, that the deceased was an old man and that when he started ailing she took him in as he had nobody to take care of him. She even built him a house in which he lived until he died. She stated that in gratitude he left his land to her but when the Objector who was away in Mombasa when all this was happening returned he persuaded her to allow him to settle on this land in exchange for his portion in the land belonging to his own father. The Petitioner obliged and the Objector took possession of the land and developed it. Later, however he also insisted on getting a share or the portion of land he had surrendered to the Petitioner in exchange for this one and hence this dispute. She feels that she should be issued with the grant because the land was bequeathed to her by the deceased.

The Objector disputed that the land was bequeathed to the Petitioner and contended that the land was bequeathed to him by the deceased. That in fact it was the deceased who took him to Kambi Ya Moto in Nakuru where he lived with him until he (Objector) became an adult and later went to live with the Petitioner's husband in Mombasa. He stated that the deceased gave this land to him in the presence of one Wagonga and Joel. He thereafter returned to Mombasa and only returned for the deceased burial. In 1994 he came home and first lived with the Petitioner before going to settle on the land in issue. Nobody told him the land belonged to the Petitioner although he left her to take care of his portion of his own

father's land. He testified that when the area chief later asked them to distribute their father's estate he had no objection. It was after he built a house on this land belonging to the deceased that the Petitioner's son filed a petition for letters of administration and when he learnt of it he filed this objection. He urged this Court to assist him as he has lived on this land for a long time and several people are buried on it. He denied that he gave this portion of his father's land to the Petitioner in exchange for this one belonging to the deceased.

At this stage the issue for determination is to who between the Petitioner and the Objector should a grant of letters of administration be made.

Section 66 of the law of Succession Act gives this Court a final discretion as to the person to whom a grant of letters of administration shall be made where a deceased died intestate. That discretion must however as always be exercised judicially and must consider the best interest of all concerned. The Court must also accept as a general guide the order of preference set out in the Act and in this case that would be the order of preference of the parties in this case. Having considered the material placed before me I am satisfied that the Petitioner is the person to whom a grant of letters of administration should be made in this case. The grant to issue to the Petitioner.

Signed, dated and delivered this 2nd day of July 2015

E. N. MAINA

JUDGE

In the presence of:-

The Petitioner in person

CC: Moses Okumu

N/A for the Objector