Obwocha v Mokua & another (Civil Appeal 241 of 2019)
[2025] KECA 1615 (KLR) (3 October 2025) (Judgment)

Neutral citation: [2025] KECA 1615 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT KISUMU

CIVIL APPEAL 241 OF 2019

HA OMONDI, LK KIMARU & JM NGUGI, JJA

OCTOBER 3, 2025

BETWEEN

PRISKA KWAMBOKA OBWOCHA ..... APPELLANT

AND

JOHN PETER MOKUA ..... 1ST RESPONDENT

JEMIMAH KWAMBOKA OGWANGA ..... 2ND RESPONDENT

(Being an appeal from the Ruling of the High Court of Kenya at Kisii (Majanja, J.) dated 21st December, 2018 in HC. Succ. Cause No. 95 of 2015)

JUDGMENT

1. This appeal arises from the ruling of the High Court sitting at Kisii (Majanja, J.) delivered on 21st December 2018 in Succession Cause No. 95 of 2015 concerning the estate of Robert Rodgers Obwocha alias Ogwagwa ("the deceased"). The deceased died intestate and was the registered owner of land parcel Central Kitutu/mwabosire/849 ("Plot 849").

2. Following his death, Prisca Kwamboka Obwocha ("Prisca"), describing herself as the widow of the deceased, petitioned the High Court for a grant of letters of administration. In her petition, she listed the following as the surviving heirs of the deceased: Prisca Kwamboka Obwocha – widow; Everline Bonareri Obwocha – daughter; Enock Nyakoe Obwocha – son; Polycarp Mose Obwocha – son; Concepter Moraa Obwocha – daughter; and Alex Ondimu Obwocha – son.

3. The petition was challenged by Peter Mogaka Mokua ("Peter") and Jemimah Kwamboka Ogwagwa ("Jemimah"), who filed a cross- application for grant of letters of administration. They contended that the deceased had in fact married two wives during his lifetime: the appellant, Prisca as the second wife, and Nyabeta Makori (deceased) as the first wife. They asserted that Nyabeta was survived by two children, namely: Douglas Magoba Akora (deceased) – son, survived by his widow Jemimah Kwamboka Ogwagwa; and Peter Mogaka Mokua – son.

4. The objectors thus accused Prisca of failing to disclose the existence of the first house, and of attempting to disinherit them by presenting herself as the sole widow.

5. The case proceeded at the High Court by way of viva voce evidence. At the hearing, Prisca (PW1) testified that she married the deceased in January, 1978 and lived with him until his death on 26th December, 2001. She insisted that his proper name was Robert Rodgers Obwocha, not "Robert Ogwagwa," and denied that he had any other wife. She claimed that she first encountered the objectors in 2008 when they allegedly invaded Plot 849 and began constructing houses and farming there. She admitted, however, that she had not taken any legal steps to stop them, and further conceded that Douglas, the son of Nyabeta, had been buried on Plot 849 alongside the deceased.

6. Prisca called supporting witnesses. David Omwango Minga (PW2), the deceased's cousin, stated that Prisca and her children took care of the deceased until his death and that no other wife was present at the burial. He denied that the objectors were related to the deceased and claimed that they invaded the land.

7. Veronica Moraa Momanyi (PW3), a community policing member, testified that she knew the deceased personally; that Prisca was his only wife, and that neither Nyabeta nor her children appeared during the deceased's illness or burial. PW3 also testified that the objectors' identity cards did not show the deceased as their father.

8. The objectors presented their case in response. Jemimah (DW1) testified that she married Douglas, son of the deceased and Nyabeta, in 2007, and that during her marriage she knew both Nyabeta and Prisca as her mothers-in-law. She produced certificates of death for the deceased and her late husband Douglas, and testified that both were buried on Plot 849. She also produced letters from the Chief dated 2nd May, 2015 and 17th October, 2014 which listed the beneficiaries of the estate as including both wives and their children.

9. Peter (DW2) testified that he had lived and worked on Plot 849 since childhood. He stated that his father, the deceased, had divided the land between his two wives during his lifetime. He accused Prisca of fraudulently transferring the whole parcel into her name after his father's death. He also explained that, owing to difficulties in obtaining his father's identity card from Prisca, he and his late brother, Douglas, had to rely on their uncle's identity card to obtain their own national identity cards. He insisted that both his late brother and his mother were buried on Plot 849, with no objection from Prisca at the time.

10. The objectors also called Ann Kwamboka Onchiri (DW3), the deceased's sister, who confirmed that her brother had married two wives and apportioned the land accordingly. Samwel Mokaya (DW4), a clan elder, corroborated this position, noting that the burials of Nyabeta and Douglas on Plot 849 was undisputed by Prisca at the time they happened.

11. Upon evaluating the oral and documentary evidence, the High Court found that the appellant and the objectors were referring to the same deceased person despite the discrepancies in names and dates on the certificates. The court held that the evidence overwhelmingly demonstrated that the deceased had married two wives during his lifetime, each with children who resided on and were buried on Plot 849.

12. For these reasons, the learned Judge found and held that the since the deceased died between 27th November, 2001, and 26th December, 2001, the distribution of his estate was subject to section 66 of the *Law of Succession Act* (Chapter 63 of the Laws of Kenya) which provides that:

> "When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration

shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference –

a. Surviving spouse or spouses, with or without association of other beneficiaries;

b. Other beneficiaries entitled on intestacy, with priority according to their respective beneficial interest as provided in Part V;

c. The Public Trustee; and

d. Creditors"

13. The learned Judge expressed the ratio of the decision as follows:

> " I am satisfied that the objectors have proved that the deceased had two wives. The first wife, Nyabeta Makori, had two children, Douglas Magoba Akora (deceased) and Peter Mogaka. Douglas was survived by his wife Jemimah Kwamboka Ogwagwa. The petitioner, who is the second wife, has five children; Everline Bonareri Obwocha, Enock Nyakoe Obwocha, Polycarp Mose Obwocha, Concepter Moraa Obwocha and Alex Ondimu Obwocha. Since the deceased had two houses, the grant of letters of administration shall issue to Prisca Kwamboka Obwocha, who is the surviving spouse from the second house, and Peter Mogaka Mokua, the deceased's son from the first house, as co- administrators in the estate of Robert Rodgers Obwocha alias Ogwagwa (Deceased)."

14. The learned Judge, therefore, appointed Prisca Kwamboka Obwocha and Peter Mogaka Mokua as joint administrators and directed them to apply for confirmation of the grant within 30 days. Each party was ordered to bear their own costs.

15. Aggrieved by that ruling, the appellant lodged this appeal faulting the learned Judge on several grounds, namely that he: (a) failed in finding in favour of the 1st respondent without giving concise reasons why he believed he was justified to be granted with letters of administration; (b) erred when he did not believe the appellant's evidence despite the fact that the 1st respondent produced before the court a death certificate that had different dates than the one produced by the appellant and a letter from the chief that had misleading remarks from the one produced by the appellant; (c) erred in not calling officials from the office of the Births and Death Certificates and the chief's office to explain the different dates and remarks on the exhibits produced before the court; (d) erred in his ruling when he stated that the appellant did not oppose that the respondents were the deceased's biological children and yet there were annexed exhibits that proved that they were imposters and there was also an application to stop the burial which was not heard and determined; (e) erred for being discriminative by siding with the respondents' advocate and denying her natural justice as she was acting in person, thereby infringing her rights through procedural technicalities; (f) erred in finding in favour of the respondents by relying on conjectures, suppositions and extraneous matters; (g) erred in demanding an order from the Court of Appeal, Kisumu, to stop him from proceeding with this matter on 4th April 2019; and (h) erred in failing to accord the appellant a right to appeal and be heard.

16. Consequently, the appellant prayed that this Court allows the appeal, set aside the ruling of 21st December 2018, and grant her sole letters of administration in respect of the deceased's estate.

17. During the virtual hearing of the appeal, there was no appearance for both parties; and only the appellant, acting in person, filed written submissions. In the premise, the Court decided to give a judgment based on the record and the submissions filed.

18. In her "supplementary affidavit" as well as the written submissions, the appellant has largely rehashed the evidence she produced before the High Court. She explains that: she is the sole wife of the deceased and were blessed with five children whose identity cards bear the deceased's name; the respondents were issued with a false death certificate; the respondents identity cards do not bear the deceased's name but that of their biological father, Ogwagwa, who entered marriage on "come we stay" basis when their deceased mother was alive; during the proceedings at the High Court, the respondents' advocate on subversive acts forced the issuance of grant of letters of administration even though there was a suit in the lower court challenging the burial of Nyabeta Makori on the deceased's property; the subversive acts of the respondents' advocate forced the appellant to lodge a complaint at the Judicial Service Commission; the appellant challenged the issuance of grant of letters of administration by the learned trial judge; the respondents sold part of the deceased's property immediately they got the grant of letters of administration; the appellant put on a restriction to stop any transaction of the deceased's property; the respondents uprooted tea bushes and coffee plants; and the respondents together with their advocate had malicious intention to sell the deceased's property for their own benefit.

19. We have carefully considered the record of appeal, the rival submissions, and the applicable law.

20. Being a first appeal, we have the duty to review issues of both facts and law afresh, and come up with our own independent conclusions. We are, however, obligated to bear in mind that the trial judge had the advantage of seeing and assessing the demeanor of witnesses. (See Selle vs. Associated Motor Boat Co. Limited (1968) EA 123). Additionally, this Court must be cognizant of the fact that it should not interfere with the findings of fact by the trial court unless they were based on no evidence or on a misapprehension of the evidence, or the trial judge is shown demonstrably to have acted on wrong principles in reaching his findings. (See Jabane vs. Olenja (1968) KLR 661).

21. The central question in this appeal is whether the High Court erred in recognizing the respondents as beneficiaries of the deceased and in appointing them as joint administrators with the appellant.

22. From the record, it is clear that the trial court had before it consistent oral evidence from multiple independent witnesses, including the deceased's sister (DW3) and a clan elder (DW4), that the deceased had two wives and that both families resided and were buried on Plot 849. These accounts were corroborated by documentary evidence such as the Chief's letters dated 2nd May, 2015 and 17th October, 2014, which identified both households as dependants.

23. The appellant's principal attack on the trial court's decision was based on discrepancies in the death certificates and the Chief's letters. The trial court, however, correctly appreciated that such inconsistencies were not fatal to the establishment of the family structure of the deceased, particularly in light of the overwhelming evidence that both wives and their children had a long-standing and recognized presence on Plot 849. In any event, the fact of the deceased's death, irrespective of the discrepancy on the date of death, was not challenged by either the appellant or the respondents.

24. We agree with the High Court's careful reasoning that succession disputes are not determined solely on documentary evidence, but on the totality of evidence, including long-settled patterns of occupation, burial, recognition by the community, and testimony from relatives and elders. The learned Judge was correct in holding that these factors carried greater probative weight than minor discrepancies in dates or nomenclature on official documents.

25. We also find no merit in the appellant's complaint that the trial court should have summoned officials from the Registrar of Births and Deaths or the Chief's office. The burden of proof in succession disputes lies with the parties, and the High Court was entitled to evaluate the documents as produced without shifting the burden to call additional witnesses. The learned Judge properly

exercised judicial discretion in resolving evidentiary conflicts without embarking on what would have been an unnecessary fishing expedition.

26. On the complaint of discrimination and denial of natural justice, we find no evidence that the appellant, who appeared in person, was hindered in presenting her case. The record demonstrates that she was fully heard, cross-examined the witnesses, and had an opportunity to produce her documents and call witnesses. The fact that the trial court did not accept her version of events does not amount to bias or discrimination.

27. In our respectful view, the High Court's findings were firmly anchored on the evidence and the applicable principles of succession law under the *Law of Succession Act*. The conclusion that the deceased had two houses and that each side should be represented in the administration of the estate was sound, fair, and consistent with both statute and precedent.

28. In the premises, we are satisfied that the appeal is devoid of merit. The High Court's ruling appointing the appellant and the 1st respondent as co-administrators of the estate of the deceased was well reasoned and justified.

29. Accordingly, the appeal is hereby dismissed. Given the family nature of the dispute and the fact that the respondents did not participate in the appeal, we direct that each party shall bear their own costs.

30. Orders accordingly.

DATED AND DELIVERED AT KISUMU THIS 3RD DAY OF OCTOBER, 2025.

H. A. OMONDI

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.. JUDGE OF APPEAL

L. KIMARU

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.. JUDGE OF APPEAL

JOEL NGUGI

.....

.. JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR