



REPUBLIC OF KENYA



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**In re Estate of Omondi Ajwala (Deceased) (Succession Cause
295 of 2012) [2024] KEHC 2991 (KLR) (22 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2991 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT BUSIA

SUCCESSION CAUSE 295 OF 2012

WM MUSYOKA, J

MARCH 22, 2024

IN THE MATTER OF THE ESTATE OF OMONDI AJWALA (DECEASED)

RULING

1. The certificate of death on record, serial number 119490, of 13th June 2012, indicates that the deceased herein, Omondi Ajwala, died on 7th December 2010. I see a letter on record, dated 7th July 2012, by the Assistant Chief of Burinda Sub-Location. It indicates that the deceased had been survived by a sister and nephews, named as Anjelina Anyango Akinyi, Jotham Godfrey Mulamba and Milton HA Okello. Representation to the estate was sought by Anjeline Anyango Akinyi, in her capacity as sister of the deceased. She listed the survivors of the deceased as the 3 individuals mentioned in the letter of the Assistant Chief. Marachi/Bumala/259 is listed as the property that the deceased died possessed of. Letters of administration intestate were duly made on 19th February 2013, and a grant duly issued on 20th March 2013. I shall refer to Anjelina Anyango Akinyi as the administratrix.
2. The administratrix sought confirmation of her grant, vide an application, dated 17th September 2013, which she filed herein on even date. The survivors of the deceased are listed as the 3 individuals listed in the letter of the Assistant Chief and in the petition, and it is proposed that Marachi/Bumala/259 be shared in a manner that would have the administratrix take 1 acre, while the 2 nephews take 2 acres each. There is a consent on distribution, of 24th March 2014, purportedly executed by the 3 survivors. There is also an affidavit, sworn by Jotham Godfrey Mulamba, on 20th May 2014, expressing support for the proposed distribution. The grant was confirmed on 29th May 2014, with the administratrix and Milton Okello in attendance. A certificate of confirmation of grant was duly issued, on 12th June 2014, in the terms of the distribution proposed in the application, dated 17th September 2013.
3. A Motion was subsequently lodged on 5th July 2015, by Isaiah Omondi Odhiambo, dated 10th July 2015, seeking revocation of the grant. He claims to be a nephew of the deceased, who resides within Marachi/Bumala/259, and who was not disclosed as a survivor of the deceased. He alleges that the grant was obtained through concealment of information. He complains that his consent was not obtained. He further alleges that Milton Okello and Jotham and Godfrey Mulamba were not beneficiaries of the estate, and that they misled the court when they signed consents to allow the administratrix petition for



- representation. He relies on a letter from the Chief of Bujumba Location, dated 24th April 2015, where he, Rosemary Miero Buluma and the administratrix are listed as the rightful survivors of the deceased.
4. The administratrix passed on, in 2016, and an application was brought, by George Owino Opondo, seeking to have her substituted as administratrix. The applicant averred to be a nephew of the dead administratrix. There is a letter from the Assistant Chief of Bukhakhala Sub-Location, dated 6th January 2017, confirming the death, but no certificate of death is annexed. The application was allowed on 7th November 2017, by consent of the parties. Affidavits were lodged subsequently, by Jotham Godfrey Mulamba and Milton HA Okello, raising concerns that they had not consented to the substitution, and a ruling was eventually delivered on those objections, on 15th April 2021, appointing the said Jotham Godfrey Mulamba and Milton HA Okello administrators of the estate, in the place of Anjelina Anyango Akinyi. It was directed that they be issued with a grant of letters of administration intestate, and that they file for confirmation of their grant within 4 months. I shall hereafter refer to Jotham Godfrey Mulamba and Milton HA Okello as the administrators.
 5. The new administrators filed a summons for confirmation of their grant, dated 12th July 2021. The affidavit in support was sworn by Milton HA Okello. He explains that the deceased had been survived by 3 individuals, the 2 administrators, and the now dead administratrix. He proposes that Marachi/Bumala/259 be distributed in a manner that would see the dead administratrix get 0.6 hectare, while the 2 administrators take 0.8 hectare each. The application is not accompanied by a consent on distribution in Form 37.
 6. Isaiah Omondi Odhiambo filed an affidavit of protest, on 4th November 2021, sworn on 28th October 2021. He avers that the 2 administrators were not relatives of the deceased. He explains that the deceased died without a spouse or children, and that those who survived him were 1 brother and 3 sisters, who he has named as Odhiambo Ajwala, Rosemary Atieno Ajwala, Anne Ajwala and Anjeline Anyango Akinyi. He describes himself as a son of Odhiambo Ajwala. He asserts that the 2 administrators were not nephews of the deceased. He avers that the 2 had alleged to have had bought land belonging to the deceased, and that sale transaction was the subject of proceedings in Busia ELC No. 88 of 2015. He has attached a copy of a sale agreement, allegedly execute between the now dead administratrix and Milton Humphrey Odhiambo Okello, where he purported to buy a 5½ acres portion of Marachi/Bumala/259 . The sale agreement is dated 10th July 2011. He dismisses the letter from the Assistant Chief as a falsehood. I shall refer to Isaiah Omondi Odhiambo hereafter as the protestor.
 7. He swore a further affidavit, on 10th December 2021, to add more information. He avers that the deceased, his uncle, had no wife, nor children, and that his parents had pre-deceased him. He states that he had 1 brother and 3 sisters. The brother is his father, the deponent, and he avers to be the only surviving child of his father. He further avers that his aunt, Anne Auma Ajwala was deceased, but was survived by children, but his other aunts, Anjelina Anyango Akinyi and Rosemary Atieno Ajwala, were also dead, but they had no children. He asserts that the 2 administrators were not children of the deceased, whether biological or otherwise, and they were not related to him in any way. He avers that he had reported the allegation that they were nephews of the deceased to the Directorate of Criminal Investigations, and he had information that Jotham Godfrey Mulamba was a son of Aggrey Okello Muganda and Joyce Anyango Okello, while Milton Humphrey Odhiambo Okello was a child of the same individuals, Aggrey Okello Muganda and Joyce Anyango Okello. He has attached documents from the Directorate of Criminal Investigations, to that effect.
 8. The summons for confirmation of grant was considered by Karanjah J, and a ruling was delivered on it on 16th June 2022. The court noted that the validity of the grant had not been made an issue in the protest, which made the allegation, that the administrators were not heirs, quicksand, and that the



court had already ruled that they were nephews of the deceased. It was held that the protestor had not provided credible evidence that they were not heirs of the deceased. The court went on to dismiss the protest. The summons was also struck out for being premature, given that Anjeline Anyango Akinyi had passed on. The administrators were directed to file a fresh summons for confirmation of grant.

9. A second application for confirmation of grant was filed on 26th June 2023, dated 22nd June 2023, again at the instance of Milton Humphrey A. Okello. The application is a replica of that dated 12th July 2021, which Karanjah J dismissed by the ruling of 16th June 2022, save that it is proposed that the share due to the late Anjeline Anyango Akinyi should devolve upon her estate, jointly with Isaiah Omondi Odhiambo. Isaiah Omondi Odhiambo has filed an affidavit of protest, which is a replica of his protest of 28th October 2021, which Karanjah J dismissed on 16th June 2022.
10. Directions were taken on 28th September 2023, for viva voce evidence. Oral evidence was taken on 22nd November 2023 from both sides. Thereafter, the parties filed written submissions, which I have read through, and noted the contents thereof.
11. I doubt that I should analyse the oral evidence that was taken from the witnesses, and I should take the parties back to the concerns that I expressed on 1st March 2023, that Karanjah J had disposed of the issues between the administrators and the protestor, with finality, in the ruling of 12th June 2022. The protest was dismissed, as the Judge ruled that the protestor had not provided adequate proof that the administrators were not heirs of the deceased. That issue became *res judicata*. It is not available for re-litigation in the manner that the protestor seeks. He should have appealed against the determination by Karanjah J. The dismissal by Karanjah J also meant that the protestor was not recognised as an heir, but I see that the administrators have now included him in their fresh proposed distribution. In my understanding, the only reason the confirmation application of 12th July 2021 was dismissed, was because it dealt with the late Anjeline Anyango Akinyi as if she was still alive, yet she had died, as at the time that application was mounted. That has now been addressed, as she is now reflected as dead, and the share due to her is proposed to be devolved to her estate, to be shared with the protestor. My hands are tied. To delve into the merits of the evidence recorded, on 22nd November 2023, would amount to sitting on appeal on the findings and holdings by Karanjah J, in the rulings of 15th April 2021 and 12th June 2022. In fact, I should not even have taken that oral evidence, in view of those rulings. The summons for confirmation that I am now determining is the third such application, where the beneficiaries are the same, and the distribution proposed is the same terms.
12. The final orders, on the application, dated June 22, 2023, are that the said application is hereby allowed, the grant herein is hereby confirmed, the estate herein shall devolve as proposed, and a certificate of confirmation of grant shall issue accordingly. Each party shall bear their own costs. Any party, aggrieved by these orders, has leave of 30 days, to move the Court of Appeal, appropriately. It is so ordered.

RULING DATED, SIGNED AND DELIVERED AT BUSIA THIS 22ND DAY OF MARCH 2024

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Juma, instructed by JV Juma & Associates, for the administrators.

Mr. Gabriel Fwaya, Advocate for the protestor.

