



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISUMU**

**SUCCESS CAUSE NO. E015 OF 2021**

**IN THE MATTER OF THE ESTATE OF LUKE OWUOR OCHIDO (DECEASED)**

**IN THE MATTER OF AN APPLICATION FOR LETTERS OF ADMINISTRATION AD COLLIGENDA BONA BY**

**MARGARET ACHIENG KASEJE**

**RULING**

The Petitioner, **MARGARET ACHIENG KASEJE**, is the first-born daughter of the deceased, **LUKE OWUOR OCHIDO**.

1. She had lodged the current Petition under **Section 67** of the **Law of Succession Act**, seeking **Letters of Administration Ad Colligenda Bona**.

2. The Petitioner was seeking a limited grant of letters of administration for the purpose of Collecting and Getting in and Receiving the estate. She told the Court that her intention is to collect the estate and then preserve it until further representation was granted by the Court.

3. It was the Petitioner's case that the original documents of the assets in the Estate were in the possession of **PHILIPA NYAMULO OCHIDO**. The assets in question are;

(i) **KISUMU MUNICIPALITY/BLOCK 4/ PARCEL NO. 76 (TOM MBOYA 4/76);**

(ii) **KISUMU/MANYATTA 'A'/PARCEL NO. 757.**

4. The Petitioner was the daughter of **GRACE MAURA OCHIDO**, who was the first wife of Luke Owuor Ochido.

5. Following the demise of Grace, the deceased married **PHILIPA NYAMULO OCHIDO**.

6. At the time when Luke passed away, on 3<sup>rd</sup> July 2010, he had assets whose value the Petitioner has said to be in excess of Kshs 97 Million.

7. It was the Petitioner's case that Philipa Nyamulo Ochido had illegally sold as well transferred some of the properties of the Estate without permission nor the consent of the other beneficiaries.

8. The Petition was supported with the Petitioner's affidavit which was sworn on 20<sup>th</sup> May 2021.

9. Annexed to the said supporting affidavit are pleadings from **SUCCESSION CAUSE NO. 80 OF 2011**, at the Principal

Magistrate's Court, Maseno. In that Cause, the Petitioner is Philipa Nyamulo Ochido.

10. I have perused the Summons for Confirmation of Grant dated 3<sup>rd</sup> December, 2012. By the said application, Philipa indicated that the Letters of Administration which had been issued to her on 1<sup>st</sup> August 2012, should be confirmed as there were no objections or protest lodged against the same.

11. The proposed mode of distribution would give to Philipa the following properties, absolutely;

(a) *SOUTH SAKWA/BARKOWINO/4136*

(b) *KISUMU/MANYATTA 'A'/757*

(c) *KISUMU MUNICIPALITY/BLOCK 4/76*

(d) *GRANT NO. IRN 187443 REF. 6526*

(e) *GRANT NO. IRN 3627 REF. 1437/04*

12. The Petitioner exhibited the Green cards for the 2 properties numbered (b) and (c) above.

13. The Green cards show that the said 2 properties had been transferred to Philipa Nyamulo Ochido on 10<sup>th</sup> September 2012.

14. Meanwhile, it was not until 7<sup>th</sup> December 2012 that Philipa filed an application for the Confirmation of the Grant. It therefore means that the transfer of those 2 properties to Philipa had taken place before confirmation of the Grant.

15. Pursuant to the provisions of **Section 45 (1)** of the **Law of Succession Act**;

*“Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of or otherwise intermeddle with, any free property of a deceased person.”*

16. It is my understanding that Philipa had sought and obtained letters of administration from the Principal Magistrate's Court, Maseno.

17. However, there has since arisen two issues of concern. First, it does appear that the said Principal Magistrate's Court lacked jurisdiction, because the value of the estate exceeded the monetary jurisdiction of the said Court.

18. It is well settled that any orders which were made by a Court that had no jurisdiction were null and void.

19. I find that the Principal Magistrate's Court, Maseno, lacked the requisite monetary jurisdiction to hear and determine the Succession Cause relating to the estate of Luke Owuor Ochido.

20. The second issue concerns the transfer of assets from the name of the deceased, to the name of Philipa.

21. Even if the Principal Magistrate's Court had jurisdiction, I find that the transfer of assets was irregular because it was done before the Court had confirmed the grant.

22. Pursuant to the provisions of **Section 71 (1)** of the **Law of Succession Act**, the holder of any grant of representation is enjoined to;

*“..... apply to the court for confirmation of the grant in order to empower the distribution of any capital assets.”*

**23.** In the absence of the order for confirmation of the grant, the Respondent did not have any authority to transfer any asset from the estate.

**24.** In order to safeguard the estate until such time as the process of succession is lawfully concluded, I order that the properties which had been transferred to Philipa Owuor Ochido should revert to the name of the deceased.

**25.** I further order that a limited grant do issue forthwith in favour of the Petitioner, **MARGARET ACHIENG KASEJE**. The Petitioner's power and authority shall be limited to collecting and preservation of the assets.

**26.** The Petitioner shall file and serve a detailed inventory of the assets within the next 90 days.

**27.** For the avoidance of any doubt, the process of collecting and preservation of the assets shall include taking custody of all the original documents of title.

**28.** On the question of costs, I direct that each party shall meet his or her own costs of the Petition. I so order because this is a family affair, whose ultimate resolution may be hampered by orders directing one beneficiary to pay costs to another beneficiary.

**DATED, SIGNED at DELIVERED at KISUMU**

This **31<sup>st</sup>** day of **January** 2022

**FRED A. OCHIENG**

**JUDGE**



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