



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT BUSIA**

**SUCCESSION CAUSE NO.107 OF 2011**

**IN THE MATTER OF ESTATE OF IRUPO ICHODO.....(DECEASED)**

**AND**

**IN THE MATTER FOR AN APPLICATION FOR REVOCATION OF**

**GRANT AND FOR CROSS APPLICATION FOR GRANT**

**BETWEEN**

**1. SIPHORAH AMUSUGUT EBU.....OBJECTOR/APPLICANT**

**2. BONVENTURE WESTERN MULAMA.....OBJECTOR/APPLICANT**

**VERSUS**

**1. WILLIAM EMASAJA ETYANG.....RESPONDENT**

**2. ROBERT EMOJONG CHANGASI.....RESPONDENT**

**R U L I N G**

[1] The application at hand is the one dated 21<sup>st</sup> October 2015, made by the two applicants/objectors pursuant to the confirmation of grant in favour of the first petitioner/respondent on the first day of November 2012. The subject grant was actually issued to the first respondent on the 11<sup>th</sup> November 2011, but was confirmed long after the expiry of the six month's period prescribed by the Law. Nonetheless, the respondent or respondents opposed the application on the basis of the averments contained in the appropriate replying affidavits.

[2] Hearing proceeded by way of written submissions which were filed by the objectors through **Wanyama & Co. Advocates** and the respondents through **Abalo & Co. Advocates**. This court has given due consideration to the rival submissions against the application and the supporting grounds which are essentially based on the allegations that the proceedings to obtain the grant were defective in substance and that the grant was fraudulently obtained by making of false statement and concealment of material facts.

[3] It is the applicant's contention that the deceased herein was survived by three sons who are all deceased and a daughter called Miriam Asio Ichodi in addition to the first objector, Siphrosa, who was a granddaughter of the deceased and a daughter of the deceased's daughter, Miriam, said to be of advanced age and in occupation of the estate property described as land parcel **North Teso/Kamuriari/762**. The applicant implied that the petitioner, William was not a son of the deceased as alleged and that his father was one Desterio Ichodo Ekakora, who passed away recently.

[4] The applicants also contended that the first petitioner and his brothers live on their father's land which is also described as **North Teso/Kamuriari/762** and that it was agreed between the first objector/applicant and her mother that 1½ acres of that land would be distributed to the first petitioner. To that extent, they approached the area chief who then wrote for them two letters dated 18<sup>th</sup> August 2010 and 9<sup>th</sup> December 2010 to enable them commence succession proceedings, but the first petitioner obtained a letter dated 11<sup>th</sup> March 2011 from another chief for him to commence succession proceedings as the sole beneficiary of the deceased's estate.

The letters aforementioned are all annexed to the appellant's supporting affidavit dated 21<sup>st</sup> October 2015.

[5] The contentions by the applicants implied that the first petitioner was not a son of the deceased but his father and the deceased shared the

same estate property. It is also implied that the first petitioner made false statements and concealed material facts when he applied for the material grant as the sole beneficiary without reference to the other beneficiaries and was in fact, not a beneficiary of the estate howsoever.

The first petitioner/respondent vehemently denied the allegations of impropriety alluded against him by the applicants/objector. In his replying affidavit deponed 29<sup>th</sup> November 2016, he admitted that he was not the son of the deceased but was adopted by the deceased as his own son following the death of his (deceased) sons. He contended that the first applicant is not a granddaughter of the deceased and her mother, Miriam was not the daughter of the deceased but one Emasaja Etyang (**deceased**).

[6] The first petitioner also contended that the second applicant/objector, Bonventure is a person unknown to him and thus a stranger in the estate of the deceased as he had never purchased any part of the estate. That he (**first petitioner**) lived with the deceased on the estate property up to the time of his passing away on 16<sup>th</sup> June 1975.

The first petitioner implied that the objectors have no *locus standi* in the matter and in particular, the first objector since her mother was not the daughter of the deceased and if she was, then she (**mother**) was the person who ought to have raised an objection to the issuance of the material grant.

[7] Affidavits in support of the respondents' case were filed by Alfred Elias Ekwenyi and Silas Stephen Massai while that in favour of the objector's case was filed by Wycliffe Epin.

For the avoidance of doubt, we are herein dealing with a succession cause as opposed to a land dispute. Therefore, all facts and arguments presented herein in relation to ownership of the estate property after the confirmation of the subject grant issued to the first respondent were unsuitable for the purposes of this cause.

Herein, whereas the objectors contend that the subject grant was obtained improperly and ought to be revoked, the respondents were of a contrary view and went further to suggest that the objectors are strangers to the estate of the late Irupo Ichudo. The obligation to establish the impropriety of the grant lay with the objectors. In that regard, they were required to prove by necessary evidence that they were the true beneficiaries of the estate as opposed to the respondents and/or that the grant was obtained by the respondents by misrepresentations in relation to the actual beneficiaries of the estate.

The respondents alleged that the objectors, more so, the first objector was not related to the deceased as her mother was not a daughter of the deceased. The first respondent readily admitted herein that he was not a son of the deceased but indicated that the deceased took him into his custody and treated him as his own son. He contented with support from his witness that the first objector and her mother were not related to the deceased as grand daughter and daughter respectively.

[8] The first objector insisted and maintained that her late mother, Miriam Asiyo, was the daughter of the deceased and that was why she filed a different succession cause with the blessing of her mother. This was **Busia Succession cause no.203 of 2011**, in which a grant dated 19<sup>th</sup> September 2011 respecting the estate of the deceased was issued to her, but as it awaited confirmation and without their knowledge the first respondent obtained a separate grant on the 11<sup>th</sup> November 2011 in the present cause and had it confirmed in his favour one year later vide the certificate of confirmation of grant dated 11<sup>th</sup> November 2012. This fact was not substantially disputed by the first respondent, but he contented that the first objector never raised any objection to his obtaining of the present grant but instead filed her own succession cause. The first respondent implied that the first objector's succession cause was meant to obstruct his present succession cause.

[9] Notwithstanding the allegations from either side, the fact remains that two grants of letters of administration intestate were issued respecting the estate of the same deceased. The initial grant dated 19<sup>th</sup> September 2011 was issued to the first objector and was apparently not confirmed within the specified period of time or at all. The second grant dated 11<sup>th</sup> November 2011 was issued to the first respondent and was confirmed on 1<sup>st</sup> November 2012. It is the grant which is the subject of this cause and indeed, application.

Contrary to what the first respondent implied, the first objector was the first between them to obtain her grant. It cannot therefore be the truth that the first objector's grant was obtained after that of the first respondent with a view to obstructing the present proceedings by the first respondent.

[10] The mere existence of two grants, in respect of the estate of the deceased herein was a pointer towards something untoward in these proceedings and indeed the other proceedings in which the first grant was obtained.

It would appear that both proceedings were defective inasmuch as conflicting information was given by either party as the time of applying for the respective grants. It is however, clear that the deceased was survived by more than one dependant.

For all the foregoing reasons, the grant herein together with its accompanying certificate of confirmation of grant dated 11<sup>th</sup> November 2011 and 1<sup>st</sup> November 2012 respectively cannot be said to have been obtained properly and lawfully and so was the grant dated 19<sup>th</sup> September 2011, issued in succession cause No.203 of 2011.

[11] Even the record herein turns on revocation or annulment of the grant issued herein in favour of the first respondent as it clearly shows that the first respondent misrepresented the facts pertaining to the deceased's estate and its beneficiaries if not concealing material facts and information pertaining to the estate and its actual and true beneficiaries. He represented himself as the son and only beneficiary of the estate oblivious of the fact that the first objector and her mother could also have been related to the deceased by blood and that is why they also filed a succession cause related to the same estate.

The first respondent also relied on a letter dated 11<sup>th</sup> November 2011 from a chief to petition for the grant but which letter has since been

disowned by the said chief who deponed an affidavit dated 9<sup>th</sup> December 2021 to that effect in favour of the objector's case. It is without doubt that the first respondent conducted himself in a dishonest and clandestine manner when he petitioned for and obtained the subject grant together with the accompanying certificate of confirmation of grant.

**[12]** In the premises, the present application by the objectors is allowed to the extent that the grant and certificate of confirmation issued on 11<sup>th</sup> November 2011 and 1<sup>st</sup> November 2012 respectively, be and are hereby revoked and/or annulled and any transactions conducted on their strength are hereby declared null and void "*ab initio*". Similarly, as indicated hereinabove that the existence of two grants for the same estate implied impropriety in the proceedings leading to the issuance of the grants, the grant dated 19<sup>th</sup> September 2011 issued to the first objector in succession cause No.203 of 2011, if not already revoked must also be revoked herein and is hereby revoked. The same cause be consolidated with this cause for the purposes of revocation of the grants issued in the respective cases and also for the purpose of preventing any further abuse of the court process.

Orders accordingly.

**J.R. KARANJAH**

**J U D G E**

**[DATED & DELIVERED THIS 21<sup>ST</sup> DAY OF FEBRUARY, 2022]**