



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

PROBATE & ADMINISTRATION NO.205 OF 2009

IN THE MATTER OF THE ESTATE OF: OJWANG AGORO.....DECEASED

BETWEEN

JOHN OLOO DUU.....PETITIONER

AND

1. CHARLES OKOTH NYABORA

2. ISAAC OUMA NYABORA.....OBJECTORS

R U L I N G

[1] The application at hand is the one dated 3rd June 2021 made by the interested party, the **County Government of Busia**, seeking the main order that the ruling made by this court on **27th November 2014** be reviewed and/or set aside and all consequential orders made pursuant thereto be vacated. The respondents are herein described as the petitioner and the objectors who were affected by the impugned ruling.

Rules 49, 63 and 67 of the **Probate & Administration Rules** together with **Orders 45 1 (a)** and **40 (1) (b)** have correctly been invoked for the purposes of the application and is so far as it relates to this succession cause whose history is traceable to the grant of letters of administration intestate respecting the estate of **Ojwang Agoro (deceased)** made by this court on 3rd November 2009, in favour of the petitioner herein, **John Oloo Duu**.

[2] The deceased was apparently survived by the petitioner who was his nephew and his estate comprised of a parcel of land described as **Marachi/Bujumba/41**, which according to the search certificate dated 13th May 2009 was jointly owned by the deceased and Nyangweso Agoro or Akoro in equal shares. However, upon confirmation of the grant on 30th March 2011, the property was divided and distributed in equal shares of 0.7 Hactares between the petitioner and the County Council of Busia, the predecessor of the interested party herein. In his supporting affidavit, the petitioner deponed that the County Council of Busia was beneficially entitled to the estate. He did not explain in what manner how that was so.

[3] Nonetheless, more than two years later on the 3rd November 2014, the objectors herein took our summons for the grant to be revoked and/or annulled on the basis that it was obtained by means of false statement and concealment of material facts such that the objectors, being the surviving children of the deceased were disinherited in favour of the County Council of Busia. The application was dated 7th October 2014 and was fixed for hearing on 27th November 2014, on which date both the objectors and the petitioner appeared in court but not the County Council of Busia which was an interested party by virtue of the distribution of part of the estate property to itself either rightly or wrongly. Most interestingly, the petitioner did not oppose the application thereby paving the way for the court to allow it after having confirmed that the interested party was aware of the date but failed to appear and also failed to file a response to the application.

[4] In essence, the court ordered for the revocation of the initial grant which was issued to the petitioner and confirmed in his favour and that of the County Council of Busia on the 30th March 2011 and not 30th March 2013 as erroneously indicated in the appropriate summons for revocation of grant.

The Court further ordered that the County Council of Busia and the petitioner be struck off from the proceedings and pleadings and that a fresh grant be issued in the joint names of the objectors and be confirmed on the same date to the extent that the estate property be distributed to the objectors in equal shares. The petitioner and the interested party from that date became strangers to any subsequent proceedings appertaining to the issuance and confirmation of the fresh grant in favour of the objectors. All transactions pertaining to the estate properly carried out or effected on the strength of the initial grant were thus rendered null and void "*ab-initio*".

[5] The grant of the fresh grant to the objectors and its confirmation in their favour proved to be the "**waterloo**" of the previous transaction to

undertaken on the strength of the previous grant issued to the petitioner on 3rd November 2009 and confirmed in his favour and that of the interested party on 30th March 2011. As such, the issuance and confirmation of the fresh grant on 8th December 2014, resulted in the re-distribution of the estate to the two objectors, **Charles Okoth Nyabora** and **Isaac Ouda Nyabora** in equal shares. Even though the petitioner and the interested party were not parties to the re-distribution proceedings each one of them was at liberty to apply for the revocation of the fresh grant and/or the fresh certificate of confirmation of grant both dated 8th December 2014 in the event of any dissatisfaction by either of them.

[6] Indeed, the interested party was dissatisfied and moved the court vide the summons dated 2nd October 2018, four years after the fact, seeking orders for revocation of the fresh grant and the accompanying certificate of confirmation of grant both issued to the objectors. After due consideration of the application and the opposition thereto by the objectors and the petitioner, the court dismissed the application on 30th April 2019 but granted the objectors/administrators thirty (30) days from that date to render accounts in terms of **S.83 (a)** of the Law of Succession Act and in default the grant be automatically revoked.

The record does not show that the objectors ever complied with the condition thereby implying that the fresh grant and the accompanying certificate of confirmation of grant both dated 8th December 2014 have since been revoked thereby also implying that all transactions undertaken on the strength of the grant have since been rendered null and void “*abniito*”.

[7] The effect of the revocation was to revert the estate property to its original owner and/or owners indicated in the certificate of search dated 13th May 2009 as Onjwang Akoro and Nyangweso Akoro. For avoidance of doubt, the estate property is **LR No.Marachi/Bujumba/41**. Onjwang Akoro or Ojwang Agoro or Ojwang Ogoro is the person referred herein as the deceased.

As there is no longer a valid grant in existence respecting the estate of the deceased, the present application by the interested party is baseless, misconceived and incompetent before this court. It is therefore dismissed with each party bearing their own costs.

[8] Even in the absence of the automatic revocation of the fresh grant and the present application a perusal of the entire record by this court indicated that the grant was for revocation on this court’s own motion in exercise of its inherent powers under **Rule 73** of the **Probate & Administration Rules**, for the ends of justice and to prevent further abuse of the process of the court.

The parties and more so the objectors, have no otherwise than to re-commence the whole process of petitioning for grant of letters of administration intestate. They must go back to the drawing board for a proper and lawful inheritance of the deceased’s property by themselves. It is sad that this matter has to end this way, but the person behind the whole mess was the petitioner who took advantage of the then prevailing circumstances and attempted to reap where he did not sow thereby leading astray the interested party and disinheriting the objectors in one way or the other. He therefore stands the risk of appropriate civil action against him by the objectors, the interested party or both. Otherwise, the grant or grants subject of this cause have since been revoked.

J.R. KARANJAH

J U D G E

[DATED AND DELIVERED THIS 17TH DAY OF FEBRUARY 2022]