

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

SUCCESSION CAUSE NO.70 OF 2003

PAUL NYONGESA.....1ST ADMINISTRATOR

JACINTA TAKA OCHIENG.....2ND ADMINISTRATOR

VERSUS

LINET AJIAMBO.....INTERESTED PARTY

R U L I N G

[1] The application falling for determination is dated 5th July 2019 and made by the interested party/objector, **Linet Ajiambo**, seeking orders for revocation or annulment of the grant issued to **Hellen Barasa Ochieng**, respecting the estate of John Ochieng Nabongo (**deceased**) and for issuance of a fresh grant in the name of **Jacinta Taka** and **Paul Nyongesa**, who are described herein as the administrators of the estate.

[2] The application is supported by the grounds set out in the appropriate summons for revocation and the averments contained in the supporting affidavit of the administrators/respondent's deponed by Paul Johnson Nyongesa on 13th March 2017. Ironically, the interested party applicant opposed the application vide her replying affidavit deponed on 4th February 2020 and later filed an application dated 22nd February 2020 for order that the County Surveyor Busia do ascertain the boundaries respecting the parcel No.1589 Samia/Butabona. This application was however, withdrawn on the 26th February 2021 with the filing of the withdrawal notice dated 24th February 2021. As directed by the court, the present application was canvassed by way of affidavit evidence and written submissions which were filed by the second administrator/respondent and the applicant/interested party.

[3] This court, having given due consideration to the application on the basis of the supporting and opposing grounds, affidavits and submissions is of the opinion that the only issue for determination is whether the grant issued herein respecting the estate of the deceased ought to be revoked and/or annulled. The enjoinder of interested party in the succession proceedings does not arise as her interest is based on ownership of part of the estate property which is a matter falling within the jurisdiction of the Environment and Land Court and so is the issue pertaining to cancellation of a title deed issued to the interested party respecting part of the deceased's estate.

[4] The material grant was issued on 3rd December 2003 to Hellen Barasa Ochieng as the surviving widow of the deceased with whom they had three sons namely Obale Ochieng, Nyongesa Ochieng and David Onyango Ochieng. Confirmation of the grant was effected on 1st March 2005 vide the certificate of confirmation of grant dated the same day. The estate property comprising a single parcel of land described as **Samia/Butabona/87** was shared among four beneficiaries i.e. David Onyango Ochieng, Albert Okumu Ochieng, Paul Nyongesa Ochieng and Linet Ojiambo Ochieng. The surviving widow retained a life interest in the portion of the estate transmitted to David Onyango.

[5] As deciphered from the record, the attempt by the respondents/administrators to revoke the grant commenced in the year 2016 culminating with the present application which was actually filed on 4th July 2019, amid several other interlocutory applications relating to legal representation and boundaries of the estate property. It is quite evident that the application was ignited by the respondents/administrator for their benefit in relation to revocation of the grant and for the benefit of the interested party in relation to her enjoinder as an interested party in these proceeding but to her detriment with regard to the land title issued to her respecting part of the estate. This explains the confused description of the parties herein.

[6] Be that as it may, the grounds for revocation of a grant are clearly set out in **s.76** of the **Law of Succession Act**, but none of them have herein been established and/or proved by the respondents/administrator against the interested party who was apparently a beneficiary of the estate as a bona-fide purchaser of part of the estate property and that was the reason that a portion of the estate was distributed to her by the actual petitioner/administrator of the estate who was the surviving spouse of the deceased and mother to the respondents/administrators herein. Most importantly, none of the applicable grounds for revocation of a grant were established or proved against the petitioner widow of the deceased. There was an attempt by the respondents to portray the petitioner as a person who was mentally unsound and could not therefore have been in a position to properly or at all administer the estate and effect distribution thereof. However, no scintilla of evidence was offered to establish the fact thereby strongly implying that the allegation was an afterthought.

[7] In sum, the present application is lacking in merit and is hereby dismissed with costs to the interested party.

Ordered accordingly.

J.R. KARANJAH

J U D G E

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