



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

SUCCESSION CAUSE NO. 13 OF 2019

IN THE MATTER OF THE ESTATE OF THE LATE CHRISTOPHER TOLLO OBIERO

GODFREY ALLAN TOLLO.....OBJECTOR/APPLICANT

VERSUS

JUDITH ADHIAMBO OBIERO.....PETITIONER/RESPONDENT

RULING

The application dated 3rd September 2020 was filed by the Objector, **GODFREY ALLAN TOLO**. It seeks the annulment of the Grant of Letters of Administration Intestate, which had been issued to the Petitioner, **JUDITH ADHIAMBO OBIERO**.

1. The grounds upon which the application are based are that;

“(a) The proceedings to obtain the grant were defective in substance.

(b) The grant was obtained through the concealment of material facts combined with various untrue allegations.”

2. The Objector is the first-born son of the deceased, **CHRISTOPHER TOLLO OBIERO**, whilst the Petitioner is the widow to the said deceased.

3. By his supporting affidavit the Objector has asserted that the Petitioner had told the court that the Objector had renounced his right to a grant of representation over the estate of his late father.

4. The Objector complained that the Petitioner and his siblings had not shared with him the pleadings that had been filed in the case. He therefore described himself as a stranger to the proceedings herein.

5. He also denied the contention that the Chief of Central Kisumu Location had presented Form 38 to him, for his signature.

6. His view was that if he had failed or declined to sign the Form 38, the Petitioner ought to have drawn a Citation, through which he would have been required to declare whether or not he was interested in applying for the Grant.

7. The Objector made it clear that he was **NOT** opposed to the Petitioner managing the Estate. However, he would wish to be appointed a co-Administrator, so that he could assist his mother in the management of the Estate of the deceased.

8. He concluded his affidavit by indicating that the reliefs he was seeking were for rectification, revocation and/or annulment of the Grant of Letters of Administration which had been granted on 16th January 2020.

9. By her replying affidavit, the Petitioner categorically denied having either concealed some material facts or having stated any untruths in her application for the letters of administration.

10. The Petitioner deposed that on numerous occasions, prior to the commencement of these proceedings, she had informed the Objector about her intention to file the Petition. She also said that she presented the Petition to the Objector.

11. Secondly, the Petitioner told this court that she had, for a period of 4 years, urged the Objector to visit the offices of the Advocates on record for the Petitioner herein. She stated that she had reached out to the Objector through text messages, face to face meetings and phone calls.

12. The Petitioner said that the Objector declined to sign the Petition, insisting that he would only sign a Petition in which he would be a co-administrator.

13. By his further affidavit, the Objector reiterated that the Petition had never been brought to his attention.

14. He denied the perception which his mother had about him; stating that he was neither rude nor combative as he had been depicted. He believes that;

“Harboring an opinion and seeking a legal process to guide the affairs of my late father’s estate cannot and should not be conflated as being rude or combative.”

15. However, he conceded that the relationship between him and his mother had degenerated. He blamed the said situation upon;

“..... a direct consequence of her ceding ground and inviting interference from extended family members on my maternal side. Said interference has also touched on the running of the estate and to my exclusion.”

16. Evidently, the Objector feels strongly, that he had been excluded from the “*running of the estate.*”

17. Although the Objector said that his mother had ceded ground, he did not explain how or when that happened.

18. The Objector also failed to give particulars of the interference visited upon the running of the estate by members of the extended family from his maternal side.

19. The provisions of **Section 45** of the **Law of Succession Act** criminalizes intermeddling with the property of deceased persons. Therefore, if any members of the extended family, or any other person was intermeddling with the property of the deceased, it is imperative that the Objector, (who says he is aware of such intermeddling) should take appropriate steps to have the culprits brought to book.

20. I note that the Objector has stated, in no uncertain terms, that he is **NOT** opposed to his mother managing the estate. Yet, in the same breath, the Objector called for the annulment of the Grant.

21. In effect, the Objector has taken positions which are inconsistent; because if the grant was annulled as prayed for in the application, his mother would not have the requisite legal authority to manage the estate.

22. And whilst the Objector emphasizes that his mother may continue to manage the estate, he also states that;

“..... she is also wont to travel abroad for extended periods of time, thus making it impractical for her to manage the estate in absentia.”

23. Once again, I find that the Objector has taken positions which are inconsistent in themselves: I say so because if it is impractical for his mother to manage the estate in absentia, it defies logic to make her a co-administrator, whilst the Objector says that the mother often traveled abroad for extended periods.

24. There is absolutely no doubt that the Objector has every right to hold an opinion about how the affairs of his late father’s estate should be managed.

25. In similar vein, each of the other beneficiaries has a similar right. I therefore fail to appreciate why the position taken by the Objector’s siblings should be perceived by him as “*blind compliance.*”

26. The Objector’s siblings signed the Consent for the issuance of the Grant to the Petitioner. By so doing, they supported the Petitioner. Their said action cannot be construed to be a lack of interest about how the estate of the deceased was to be managed.

27. In any event, it is not possible to have, in all cases, all persons who are beneficiaries appointed as Administrators.

28. And the fact that any or another of the beneficiaries was not an administrator should not be prejudicial to the said beneficiary.

29. Therefore, I find that just because the Objector is not one of the administrators cannot be a basis for concluding that he runs a greater risk of being disinherited and/or cheated out of his fair and lawful share of his late father’s estate.

30. Whereas the Objector may not have fully appreciated the import of the views expressed in his affidavit, I hold the considered view that the said views are a reflection of the Objector’s disdain for his mother and his siblings. I so find because I can find no other explanation for the Objector’s conclusion, to the effect that if he did not become a co-administrator to the estate, he would probably be disinherited or cheated out of his fair share of the estate: the insinuation is that his mother cannot be trusted to fairly distribute the estate.

31. In the light of such an attitude, I find that it would most probably be difficult for the Objector to work together with his mother, in such manner as would move the case herein expeditiously towards the distribution of the estate.

32. Pursuant to **Section 66** of the **Law of Succession Act**;

“When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference –

(a) surviving spouse or spouses, with or without association of other beneficiaries;

(b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;

(c) the Public Trustee; and

(d) creditors; Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.”

33. It is clear that the general guide concerning the order of preference ranks the surviving spouse first. It does not rank the spouse at the same level as the children.

34. Therefore, the Petitioner had no obligation to seek the consent of her children prior to petitioning for the grants of letters of administration intestate. By so stating, I am not suggesting that the spouse should ignore the children of the deceased spouse, when instituting proceedings for succession. The best practice is for a petitioner first seeking concurrence of the beneficiaries before moving the court.

35. When the Petitioner sought the concurrence of her children, that did not elevate them to a status equal to hers, as stipulated in **Section 66** of the **Law of Succession Act**.

36. I also find that the Objector has failed to demonstrate how or where the Petitioner had indicated that the Objector had renounced his right to apply to be an administrator of the estate of his late father.

37. As regards the question whether or not the Petitioner or the chief had presented the Petition to the Objector for his signature, I find that, on a balance of probability, the Objector failed to prove his assertion. In other words, I find it to be more probable than not, that the petition was brought to the attention of the Objector, who then declined to sign the accompanying Form 38.

38. As the Objector has failed to prove the grounds upon which the Summons for the Revocation or the Annulment of the Grant were based, the said application is rejected.

39. Notwithstanding the dismissal of the application, I order that each party will meet their own costs thereof: I so order because this is a family matter, in which the interests thereof are best served by orders which would possibly enhance harmony, rather than orders that could fuel a rift between members of the same family.

DATED, SIGNED and DELIVERED at KISUMU This 22nd day of February 2021

FRED A. OCHIENG

JUDGE