



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT BUSIA**  
**SUCCESSION CAUSE NO.133 OF 2010**  
**IN THE MATTER OF SUCCESSION ACT CAP 160 LAWS OF KENYA**  
**AND**  
**IN THE MATTER OF SIMON ODIKOR OJUMA.....APPLICANT**  
**AND**  
**IN THE MATTER OF BENJAMIN NICK OMOIT.....RESPONDENT/ADMINISTRATOR**

**R U L I N G**

[1] After the demise of the late Desterio Ojuma Omoite (**deceased**) on the 23<sup>rd</sup> January 2004 at the age of sixty eight (68) years, his son, Benjamin K. Omoite (**Petitioner**) applied for letters of administration intestate respecting the estate of the deceased. In doing so, the petitioner identified himself and his siblings as the beneficiaries of the estate. Apparently, the deceased as per the chief's letter dated 10<sup>th</sup> May 2010, was survived by two widows and about eleven (11) children i.e four (4) sons and seven (7) daughters.

The necessary grant of letters of administration Intestate was issued on **13<sup>TH</sup> OCTOBER 2010** and was confirmed on **9<sup>TH</sup> MAY 2011**.

[2] However, after a period of three years from the date of confirmation of the grant the applicant, Simon Odikor Ojuma (**objector**), sought an Order for the revocation of the grant vide a notice of motion dated **16<sup>TH</sup> APRIL 2013** and filed herein on 22<sup>nd</sup> April 2013. The grounds in support of the affidavit are set out in the notice of motion and are enhanced by the averments of the applicant in his supporting affidavit deponed on 16<sup>th</sup> April 2013 and a further affidavit dated 3<sup>rd</sup> October 2013.

The petitioner/respondent, opposed the application on the basis of the ground, contained in his replying affidavit dated 10<sup>th</sup> June 2013.

[3] The hearing of the application proceeded seemingly by way of affidavit evidence and written submissions. In that regard, the objector's submissions were filed herein on 10<sup>th</sup> March 2020 by **M/S OMOUNDI BW'ONCHIRI ADVOCATES** and those of the petitioner were filed on 28<sup>th</sup> April 2020, by **BOGONKO, OTANGA & CO. ADVOCATES**.

Having given due consideration to the application on the basis of the grounds in support thereof and opposition thereto, as well as the rival submissions, it became apparent to this court that the main complaint against the petitioner was centred more on the distribution of the estate as specified in the certificate of confirmation of grant dated 9<sup>th</sup> May 2011. Otherwise, the issuing of the grant, to the petitioner is actually not a contested matter.

[4] In essence, the objector, is seeking revocation of the certificate of confirmation of grant to pave way for the issuance of a fresh certificate on the basis of a fair or equitable re-distribution of the estate. Such revocation whether it is in respect of the certificate of confirmation of grant and/or the main grant must accord with the provisions of **S.76** of the **LAW OF SUCCESSION ACT**. Herein, the objector invoked **S.76 (a) (ii)** of the Act and also **S.83 (h)** and **(i)** of the Act, which essentially deals with duties of personal representatives and may not be relevant for the purposes of the present application.

[5] **S.76 (a) (ii)** of the Act provides that a grant, whether or not confirmed, may at any time be revoked or annulled if the person to whom the grant was made has failed, after due notice and without reasonable cause to proceed diligently with the administration of the state.

It was therefore incumbent upon the objector to establish and prove by necessary evidence that the petitioner has failed to proceed diligently with the administration of the estate in terms of the mode of distribution set out in the material certificate of confirmation of grant.

[6] A grant is normally confirmed after an agreement or consensus by the beneficiaries on the mode of distribution of the assets available for distribution. So it was presupposed that the beneficiaries had agreed on the specific share of the estate among themselves, prior to the confirmation of the grant.

Indeed, the court was satisfied that the beneficiaries or those entitled to a share of the estate properly being **LAND PARCEL NO. SOUTH TESO/APOKOR/1745**, were in agreement before the necessary certificate of confirmation grant was issued. The schedule in the certificate clearly identifies and defines the shares of the deserving beneficiaries who apparently include both the petitioner and the objector.

[7] Apart from making generalized and un-substantiated allegations, the objector has not proved by cogent evidence that the petitioner in undertaking his duty as the administrator departed from the schedule in the impugned certificate of confirmation of grant which clearly specified the acreages available to the identified beneficiaries. Any issue arising from the implementation of the schedule in relation to third parties was a new issue pertaining to new title and ownership of the distributed estate and hence, falling within the jurisdiction of the Environment and Land Court rather than the Succession Court.

[8] Indeed, the objector has failed to establish that the certificate of confirmation of grant was obtained by false representation and/or concealment of a material fact or in proceedings which were defective in substance, in terms of **S.76 (a) and (b)** of the **LAW OF SUCCESSION ACT**

In sum6, the application vide the notice of motion dated 16<sup>th</sup> April 2013, is devoid of merit and is hereby dismissed with each party bearing their own costs.

It is however observed that there is another application for revocation of the same grant presented by different applicants and based on different grounds. It is dated 14<sup>th</sup> February 2020 and was filed herein on 18<sup>th</sup> February 2020, through **J.V. JUMA & CO. ADVOCATE**. It is pending hearing and determination and in that regard, the matter be mentioned on 14<sup>th</sup> April 2021 for direction, or otherwise. Mention notice to issue accordingly.

**J.R. KARANJAH**

**J U D G E**

**[READ AND SIGNED THIS 24TH DAY OF MARCH 2021]**