



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

SUCCESSION CAUSE NO 450 OF 2012

IN THE MATTER OF THE ESTATE OF THE LATE LEWNADUS AGWENY BWALA (DECEASED)

IN THE MATTER OF APPLICATION FOR REVOCATION OF GRANT BY:

PETER OKOTH OSIDA.....OBJECTOR

AND

JACOB OMONDI OSIDA.....1ST PETITIONER

FLERIA AKUMU OGONDA.....2ND PETITIONER

RULING

1. On 28th January 2020, the Objector herein filed Summons for Revocation of Grant of even date. He sought for orders that the Grant of Letters of Administration of the Estate of Lewnadus Agweny Bwala (hereinafter referred to as “the deceased”) that was issued to Jacob Omondi Osida and Fleria Akumu Ogonda on 13th February 2013 and confirmed on 30th December 2013 be revoked and that upon the said order being granted, this Honourable court be pleased to appoint him as the sole administrator of the deceased’s estate.
2. In his Affidavit that he swore on 28th January 2020, he stated that the deceased was his paternal uncle and that the 1st Petitioner was a son to James Osida Bwala (now deceased), a brother to the deceased. He was emphatic that the 2nd Petitioner was not related to the deceased and was a neighbour. He averred that the deceased had married one Christina Atieno Agweny and that they were never blessed with any children. He added that the deceased never remarried after her death.
3. It was his contention that the Petitioners obtained the Grant of Letters of Administration to the deceased’s estate fraudulently as they made false statements and concealed material facts that they were son and sister-in-law to the deceased respectively.
4. He pointed out that the Petitioners were disposing of the deceased’s properties namely, Kisumu/Wangaya/II/184, Kisumu/ Wangaya/II/143 and Kisumu/Wangaya/II/38 (hereinafter referred to as “the subject premises”) and that he had already been issued with a Notice to vacate the land.
5. He contended that he had been disinherited and his name did not appear as a beneficiary to the deceased’s estate and thus urged this court to revoke the said Grant and issue him with a fresh grant.
6. On their part, on 24th February 2020, the 2nd Petitioner swore a Replying affidavit on his own behalf and on behalf of the 2nd Petitioner herein.
7. The Petitioners contended that they had not contravened any part of the Succession Act but that they had fully complied. They pointed out that they had already been registered as the owners of the subject premises and what was pending was the distribution to the deceased’s dependants and that the Objector was only objecting to the grant due to greed.
8. They averred that the deceased was married to one Hezia Atieno Agweny (now deceased) and not Christina Atieno Agweny as had been contended by the Objector and that upon the death of Hezia Atieno Agweny, the deceased inherited her sister, the 2nd Petitioner herein as his wife as per the Luo traditions and handed over the legal documents as pertains his estate to her. They denied that the 2nd Petitioner was intermeddling with the deceased’s estate and asserted that she was the deceased’s widow.
9. They further argued that the Objector signed both consent to the making of grant and consent to the mode of distribution and was actively involved in the succession process and that the issue of fraud only existed in his mind as there were no false statements made of any nature and that he had failed to prove this particular allegation. They thus urged the court to disregard the same.

10. They added that each and every dependant's interest was considered in the succession process and that the Objector was awarded portion of land parcel number Kisumu/Wangaya/II/38, which consent was endorsed by this Honourable Court. They pointed out that he was pushing to sell land belonging to the other dependents to alleged purchasers namely, Andrew Ogondi Oyugi and Patrick Adindo Adhoch and that it was those purchasers who were purportedly pushing him to come to court after the Area Chief issued them with a letter to vacate the said land parcel to pave way for distribution of the deceased estate as agreed.

11. It was their contention that the other beneficiaries had no problem with the sub-division and thus urged this court to dismiss his application.

12. The Objector did not file any Written Submissions in this matter. On the other hand, the Petitioners filed their Written Submissions dated 10th March 2021 on 11th March 2021.

13. The Petitioners relied on Section 66(b) of the Law of Succession Act and Articles 27(1), (2) & (3), 40(1) & 2(a) & (b) & 60 (1) (f) to buttress the point that the 2nd Respondent, being female or otherwise, has all the legal rights and interests, equitable or otherwise as a beneficiary to petition for Letters of Administration, Intestate, in relation to her own husband/father's estate.

14. They submitted that the objection was premised on non-issues, greed, personal vendetta, egoism and chauvinism and that it was based on misguided facts and an abuse of the court process.

15. According to section 76 of the Law of Succession Act Cap 160 (Laws of Kenya);

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

a. that the proceedings to obtain the grant were defective in substance;

b. that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;

c. that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;

d. that the person to whom the grant was made has failed, after due notice and without reasonable cause either—

(i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or

(ii) to proceed diligently with the administration of the estate; or

(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or

e. that the grant has become useless and inoperative through subsequent circumstances.

16. **In the Matter of the Estate of L A K – (Deceased) [2014] eKLR**, the court therein held that:-

“Revocation of grants is governed by Section 76 of the Law of Succession Act. The relevant portions of Section 76 are paragraphs (a), (b) and (c) since the issues raised relate to the process of the making of a grant. A grant may be revoked where the proceedings leading up to its making were defective, or were attended by fraud and concealment of important matter, or was obtained by an untrue allegation of a fact essential to the point.”

17. In order for the orders sought to be granted, an objector must prove that the grounds for revocation have been satisfied. The Objector herein contended that the Petitioners made false statements to court that they were son and sister-in-law (respectively) to the deceased. It was not disputed that the deceased died with no issues. In the African setting a “nephew” can be termed as “son”.

18. As regards the 2nd Petitioner, it was true that she was first a sister in-law to the deceased who had married her sister and subsequently, the wife to the deceased having been inherited as wife vide Luo customary laws. This court was therefore not persuaded that there were false statements concerning the relation of the Petitioners to the deceased and hence found and held that the grant was not obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case as had been contended by the Objector herein.

19. The court was also not persuaded that the Objector had been disinherited and that he had not been listed as beneficiary in the Succession cause. A perusal of the Chief's Letter dated 23rd January 2021 that was annexed to the Petition for Grant of Letters of Administration showed that the Objector had been listed as a son to James Osida Bwala, a brother to the deceased. He had also been listed as a beneficiary to the deceased's estate in Form P & A 5 attached to the aforesaid Petition. He had also given his consent in Form 38 that he executed on 2nd July 2012 before a Commissioner for Oaths. He did not contend that his signature was forged and/or that it was obtained under duress, by

misrepresentation and/or by mistake. Most importantly, he did not rebut the Petitioners' assertions that he duly gave his consent.

20. In addition, he was also listed in the Certificate of Confirmation of Grant that was dated 31st December 2013. He was indeed awarded a portion of the Land Parcel Kisumu/Wangaya/II/38 that was held in trust for him and other beneficiaries of the deceased by the Petitioners herein. The court noted that the Petitioners were in the process of distributing the deceased's estate as was evidenced in the letter from the Assistant Chief dated 14th September 2019, which letter was attached to the Petitioners' Replying Affidavit.

21. After carefully considering the Affidavit evidence and the Petitioners' Written Submissions, this court came to the firm conclusion that the Objector did not prove that there was merit in revoking and/or annulling the Grant of Letters of Administration that was issued to the Petitioners herein as stipulated in Section 76 of the Law of Succession.

DISPOSITION

22. For the foregoing reasons, the upshot of this court's decision was that the Objector's Summons for revocation of grant dated and filed on 28th January 2020 was not merited and the same be and is hereby dismissed with costs to the Petitioners herein.

23. It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 28TH DAY OF APRIL 2021

J. KAMAU

JUDGE