



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

SUCCESSION CAUSE NO.173 OF 2009

IN THE MATTER OF THE ESTATE OF MARTIN OCHOM OCHEK

(DECEASED)

COLLETA ANYANGOT OCHOM.....PETITIONER/RESPONDENT

VERSUS

TABITHA AMUKAGA OURE.....OBJECTOR/APPLICANT

R U L I N G

1. The application dated 23rd December 2019 made by way of Summons for revocation or annulment of grant under **S.76** of the **LAW OF SUCCESSION ACT**, seeks an Order for the revocation or annulment of grant of Letters of Administration issued to the respondent, **COLLETA ANYANGOT OCHOM**, on the 2nd March 2010 and confirmed on the 11th May, 2011.

The grounds in support of the application are set out in the summons and fortified by averments contained in the supporting affidavit deponed on 25th December 2019, by the applicant objector **TABITHA AMUKAGA OURE**.

In opposing the application, the respondent filed a replying affidavit dated 17th February 2020.

Additional affidavits were later filed by both parties in support of or opposition to the application.

2. Hearing of the application proceeded by way of affidavit evidence and written submissions.

In that regard, the objector's submissions dated 15th April 2021 were filed by **ABALO & CO. ADVOCATES**, while the respondent's submissions dated 8th April 2021 were filed by **GABRIEL FWAYA ADVOCATES**. The rival submissions were given due consideration by this Court in the light of the grounds in support of the application and those in opposition thereto. It is thus the opinion of this Court that the actual bone of contention revolves around the non-inclusion of the objector as a beneficiary of the estate of the late Martin Ochom Ocheke (**DECEASED**).

It was the objector's contention that the respondent obtained the grant by concealment of material facts in that she failed to recognize and include the objector as a beneficiary of the estate being land parcel No.**SOUTH TESO/ASINGE/1168**, which according to the objector belonged to her late father Emenje Ingura rather than the deceased.

3. However, the documents from the Land Registrar annexed to the objector's supporting affidavit clearly indicate that the suit estate belonged to the deceased Ochomo Ocheki even prior to its sub-division to create two distinct parcels of land including the suit estate South Teso/Asinge/1168.

It would therefore follow that the rightful heirs of the deceased were the rightful beneficiaries of the estate property.

The objector, having not been an heir of the deceased could not be included as a beneficiary of the suit estate property and cannot now be heard to complain or allege that the material grant was obtained by the respondent by concealment of material facts.

4. What is clear from the evidence adduced herein is that the objector is actually laying claim to the estate property or part thereof on the basis that it belonged to her late father rather than the deceased. Such a claim in as such as it is based on an interest in land or ownership of land cannot be litigated in this forum but in the Environment and Land Court in which case the objector may be required to file a land dispute case against the estate of the deceased. As for the respondent, being the only surviving child of the deceased she was properly and legally entitled to petition for grant of letters of administration intestate respecting the estate of her deceased father to the exclusion of any other

person including the objector.

5. For all the foregoing reasons, this present application by the objector is devoid of merit and is hereby dismissed with each party bearing their own costs.

Ordered accordingly.

J.R. KARANJAH

J U D G E

[Read and signed this 22nd day of April, 2021]