



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

CIVIL APPEAL NO.6 OF 2020

FREDRICK OMUGAKA OJUMA.....APPELLANT

VERSUS

CHARLES E. OJUMA.....1ST RESPONDENT

JANIFER NANJALA SOROM.....2ND RESPONDENT

J U D G M E N T

[1] The grant of Letters of Administration Intestate dated 2ND **DECEMBER 2002** respecting the estate of the late Andrea Soromo (**DECEASED**) was issued to **FREDRICK OMUGAKA OJUMA (APPELLANT)** who much later on the 19th July 2017 applied for confirmation of the same on the basis of the mode of distribution set out in paragraph (5) of the supporting affidavit. However, on the 21st November 2018, an affidavit of protest against confirmation of grant was filed by **JANIFA NAMPALA SOROM (SECOND RESPONDENT)**.

[2] Accordingly, on the 11th March 2019, the court directed that the protest be heard by way of written submissions. In that regard, both parties filed their respective submissions and on the 19th November, 2019, the court rendered its ruling to the extent that the protest was sustained on the main ground that the daughters of the deceased were not included as heirs or beneficiaries of the estate.

[3] Being aggrieved by the ruling, the appellant preferred this appeal on the basis of the ground, set out in the record of appeal dated 12th February 2020 as amended on 23rd February 2021. The appeal was canvassed by way of written submissions and in that regard, the appellant's submissions were filed on 5th March 2021 by **J.P MAKOKHA & CO. ADVOCATES**, while those of the two respondents were filed by themselves on 4th March 2021.

[4] At this stage, the duty of this court is to re-evaluate the evidence availed at the lower court and draw its own conclusions. Having done so, and having also considered the appeal as the basis of the supporting grounds, and those in opposition thereto in the light of the rival submissions, the opinion of this court is that ground one of the appeal is unsustainable and is overruled and dismissed for being a veiled personal attack on the conference of the trial court and having no bearing to the matters in issue in the trial. This would also apply to ground four.

[5] The foregoing grounds, are a clear demonstration of a party attacking without any shread of justification the trial court; personality rather than the legal and factual shortcomings , of the impugned ruling. To say the best, these grounds, are neither relevant nor made in good faith for the purpose of this appeal.

[6] Be that as it may, on the issue of "*res-judicata*" i.e grounds three and five if the appeal, the trial court concluded that the issues raised in the protest were not "*res-judicata*" visa-a-vis a previous application as the parties in both applications are different.

[7] Indeed, in this application which is essentially a protest to confirmation of grant, the applicant is the second respondent while in the previous application which was not a protest to confirmation of grant but rather an application for and/or annulment of grant, the applicant was the first respondent, **CHARLES OJOMA**. Clearly, the two applications involved different parties and causes of action. The trial court cannot therefore be faulted for ruling that this matter was not "*res-judicata*". In the circumstances, grounds two and five of the appeal are lacking in merit and are hereby overruled and dismissed.

[8] With regard to ground two, the trial court allowed the protest hereby disallowing the appellant, application for confirmation of the grant on the basis of the proposed mode of distribution. The issue was not the validity of the grant but the property and/or legality of the proposed mode of distribution. In upholding or sustaining the protest, the court in effect returned the parties to the drawing board with regard to the distribution of the estate.

[9] All the beneficiaries were to consult afresh and come up with an agreed mode of distribution before taking out fresh issues for confirmation of grant. Short of that, any of the beneficiaries whether or not included as such was at liberty to question the validity of the grant by taking out summons for revocation and/or annulment of the grant if he/she had not previously done so.

[10] In the impugned ruling, the trial court merely directed the parties on the action to be taken should they fail to agree on the mode of distribution. The second respondent as the successful protestor was given the liberty to apply for revocation and the rectification of the grant if she deemed it necessary. There was nothing “strange” about that Order and/or directive as **RULE 73** of the **PROBATE & ADMINISTRATION RULES**, allows a court to make such Orders, as may be necessary for the ends of justice or to prevent abuse of the process of the court. Such are inherent powers of the court which may be applied against any part at any time during the life of a succession cause.

[11] It would therefore follow that ground two of the appeal is also lacking in merit and is hereby overruled and dismissed.

In sum, this appeal is devoid of merit and is hereby dismissed in its entirety with costs to the second respondent only.

Ordered accordingly.

J.R KARANJAH

J U D G E

[READ AND SIGNED THIS 15TH DAY OF APRIL, 2021].