



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

PROBATE AND ADMINISTRATION CAUSE NO.68 OF 2012

IN THE MATTER OF THE ESTATE OF THE LATE WESONGA OKWANDA WERE (DECEASED)

BETWEEN

GEORGE ODONGO WESONGA.....PETITIONER/RESPONDENT

AND

DAVID WABWIRE WAFULA

STEPHEN WERE OUNDO.....OBJECTOR/RESPONDENT

R U L I N G

[1] The grant of letters of administration respecting the estate of the late Wesonga Okwanda Were (**DECEASED**) was issued on the 16<sup>th</sup> May 2012, to George Odongo Wesonga (**PETITIONER**) and was confirmed on the 2<sup>nd</sup> May 2013. The estate property comprised of plots No.165 and 134 Busia Municipality. The first plot No.165 was transmitted to the petitioner while the second plot No.134 was transmitted to beneficiaries Peter Odhiambo Wesonga and Everlyne Narocho Wesonga. Both plots are formerly described as parcel No.BMC/LH/7783/165 and No.BMC/LH/7983/134/00 as per the amended certificate dated 2<sup>nd</sup> March 2017.

[2] Approximately five or so years after the distribution of the estate a chamber summons dated 2<sup>nd</sup> September 2014, was filed by **DAVID NABWIRE WAFULA** and **STEPHEN WERE OUNDO (APPLICANT/OBJECTOR)** seeking the main order that the grant and the certificate of confirmation of grant issued to the petitioner/respondent be revoked on the basic ground that the grant was issued by concealment of material facts to the effect that plot No.165 was partly owned by the deceased and the late **PETER OUNDO WAFULA**, who was a brother to the first objector and father to the second objector. The objectors therefore claim a 2/3<sup>rd</sup> share of the plot No.165 as the remaining 1/3 share belonged to the deceased herein.

[3] The claim was vehemently opposed by the respondent and when the matter came up for hearing by way of affidavit evidence and written submissions, both parties filed their written submissions arguing their respective cases. The objector's submissions dated 17<sup>th</sup> May 2011, were filed on their behalf by **BOGONKO OTANGA & CO. ADVOCATES** while the submissions by the respondent dated 5<sup>th</sup> May 2021, were filed on his behalf by **M/S ABALO & CO. ADVOCATES**. Having considered the application or objection on the basis of the supporting grounds and those in opposition thereto in the light of the rival submissions, it is clear to this court that the issue arising for determination is whether the application is competent and proper before the court and if so, whether the objectors would be entitled to an order for revocation of the grant together with the resultant certificate of confirmation of grant.

[4] With regard to competence and propriety of the application, it is notable that the application was wrongly presented to the court by way of chamber summons instead of summons for revocation and or annulment of grant. Further, **S.71** of the **LAW OF SUCCESSION ACT** which provides for confirmation of grant was invoked instead of **S.76** which was the correct provision as it provides for revocation or annulment of grant. Further, the description of the parties in the chamber summons is incorrect such that the objectors were described as the petitioners and the petitioner as the objector. It would therefore follow that the application is defective, incompetent and improper before the court.

[5] Be that as it may, and even if the application was proper and competent, its tenor is that of an application or a dispute arising from a claim of ownership of land as between the objector and the estate of the deceased through the petitioner. Indeed, the claim is on an interest in land rather than an interest in the estate property on the basis of entitlement as a beneficiary and/or dependant. As a matter of fact and evidence the objectors are not entitled to the estate as beneficiaries whatsoever. It was therefore not necessary for them to be included in the administration of the estate and its resultant effects. This is more so considering that the estate property plot No.165 was wholly availed for distribution as part of all the immovable property belonging to the deceased as the sole proprietor and not a joint proprietor with any other

person.

**[6]** The objectors cannot therefore be heard to say that the petitioner obtained the grant by concealment of material facts in relation to plot No.165. If they genuinely believe or hold that they have an interest in the property, then their remedy lies not in this succession court but in the Environment & Land Court. As it were, this court lacks the necessary jurisdiction to deal with a claim of ownership of land and indeed, any claim based on an interest in land.

**[7]** It is clear for all the foregoing reasons, that this application is not only incompetent and improper before this court but also devoid of merit for grant of the order for revocation of grant sought by the objectors.

In sum, the application is dismissed with costs to the petitioner.

Ordered accordingly.

**J.R. KARANJAH**

**J U D G E**

**[READ AND SIGNED THIS 25<sup>TH</sup> DAY OF MAY 2021]**

[In the presence of **M/S ACHALA** for Petitioner/Respondent]