



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT HOMA BAY**

**PROBATE & ADMINISTRATION NO.17 OF 2016**

**IN THE MATTER OF THE ESTATE OF:**

**ELIAS ONDEGO AKUNGU.....DECEASED**

**BETWEEN**

**CONSOLATA ANYANGO ONDEGO.....OBJECTOR/APPLICANT**

**AND**

**MAURICE OCHIENG ONDEGO.....PETITIONER/RESPONDENT**

**RULING**

1. Consolata Anyango Ondego the objector/applicant herein moved the court by way of summons for revocation or annulment of grant dated 21<sup>st</sup> September 2020 under section 76 (a), (b) & (c) of the Law of Succession Act and Rules 36(3), 44 and 73 of Probate and Administration Rules. She is seeking the following orders:

- a) That this honourable court be pleased to revoke and/or annul the grant of letters of administration issued to the petitioner on the 15<sup>th</sup> May, 2017 and confirmed on the 7<sup>th</sup> June, 2020.
- b) That this honourable court be pleased to revoke and annul the registration of land parcel number KANYANDA/KATUMA "A"/1265 in the name of the petitioner/respondent and an order of rectification be issued rectifying the register to reflect the name of the deceased herein.
- c) That this honourable court be pleased to make a declaration that the applicant is entitled and best suited to administer the estate of the deceased herein and to issue such a grant of representation to the applicant.
- d) That this honourable court be pleased to revoke and/or annul any other titles emanating from the subdivision of land parcel number KANYANDA/KATUMA "A"/1265 and the same to revert in the name of the deceased herein.

2. The application is premised on the following grounds:

- a) That the proceedings to obtain the grant were defective in substance.
- b) That the petitioner/respondent obtained the grant through fraud.
- c) That the petitioner/respondent concealed from the court some of the beneficiaries.
- d) That the applicant is the widow of the deceased herein.

3. The application was opposed on the following grounds:

- a) That at the time of the death of the deceased, the applicant was divorced; and
- b) That the applicant was provided for.

4. When applying for the letters of administration, the petitioner/respondent attached a death certificate in respect of the deceased which was

registered on 6<sup>th</sup> December, 2011. The applicant has contested this certificate and exhibited an earlier one registered on 31<sup>st</sup> January 2001.

5. There can never be two death registrations in respect of the same deceased; the latter registration must have been fraudulent.

6. Form P & A. 5 has listed only three beneficiaries namely Consolata Anyango, Mourice Ochieng Ondego and Rosemary Atieno. Consolata Anyango is described as a son. I am not sure whether this was an erroneous description or not.

7. Consolata Anyango, the applicant herein has contended that she is not literate. She argued that the signature on the consent to the making of grant was not hers. The respondent did not respond to this serious allegation.

8. In the documents filed in this matter, the applicant has not signed but affixed her thumb print. This persuades me to make a finding that she is not literate and could not have signed on the consent to the making of grant form.

9. Section 76 (b) of the Law of Succession Act provides as follows:

**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—**

**(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;**

10. In the instant application, I make a finding that the grant was obtained fraudulently. I am annulling and revoking the same with costs to the applicant.

11. For avoidance of any doubts, land parcel number KANYANDA/KATUMA "A"/1265 to revert in the name of the deceased herein.

12. I appoint both the applicant and the respondent herein as joint administrators of the estate of Elias Ondego Akungu. They must file the necessary application for confirmation within 30 days failure to do so, their appointment will be automatically be revoked.

**DELIVERED AND SIGNED AT HOMA BAY THIS 20<sup>TH</sup> DAY OF MAY, 2021**

**KIARIE WAWERU KIARIE**

**JUDGE**