



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

SUCCESSION CAUSE NO.100 OF 2002

IN THE MATTER OF THE ESTATE OF THE LATE

NELSON OGANA OSOLO.....DECEASED

AND

ALICE IMALI OSOLO.....1ST PETITIONER

MARY NJAMBI OSOLO.....2ND PETITIONER

VERSUS

DANIEL OGANA OSOLO.....OBJECTOR/APPLICANT

R U L I N G

1. The application dated 29th March 2019, for revocation of the grant issued on 11th February 2004 and confirmed on 4th December 2004 in favour of Alice Imali Osolo and Mary Njambi Osolo (**petitioners**), is made by Daniel Ogana Osolo (**applicant/objector**) under s.76 (d) of the Law of Succession Act on the basis of the grounds set out in the necessary summons and fortified by the applicant's supporting affidavit dated 29th March 2019.

Both petitioners filed that respective replying affidavits in respect to the application which was canvassed in court by way of written submissions which were filed by the first petitioner (**Alice**) and the applicant through the firm of **Bogonko, Otanga & Co. Advocates**.

The second petitioner (**Mary**) did not file any submissions.

2. Having considered the application on the basis of the supporting grounds, and the written submissions, it became apparent to the court that the issue for determination is whether the petitioners have failed to proceed diligently with the administration of the estate as contemplated in paragraph sub section (ii) of s.76 (d) of the **Law of Succession Act**.

Although in the application the applicant tends to indicate concealment of material facts as a supporting ground, the necessary sub section (b) of s.76 of the Act is not invoked.

In any event, there was no evidence from the applicant that the petitioners concealed material information by failing to identify all the beneficiaries for the distribution of the estate. Such beneficiaries included the two surviving widows, of the deceased (**petitioners**) and the children of the deceased with or without them.

3. Further none inclusion of a beneficiary in the distribution of the estate of a deceased person does not prove nor mean that the petitioners/administrators have not proceeded diligently with the administration of the estate. Any oversight in that regard can easily be remedied by inclusion of the omitted beneficiary in the distribution of the estate.

Clearly, the applicant has failed to establish that the petitioners acted contrary to s.76 (d) of the Law of Succession Act in the administration of the estate. Consequently, this application is devoid of merit and was clearly made in bad faith considering that it was filed herein on the 29th March 2019 yet the subject grant was issued as amended on 11th February 2004 and confirmed belatedly on 4th December 2007, a period of more than ten (10) years. It would not be far-fetched for this court to opine that the application was nothing less than an afterthought intended to abuse the court process.

4. The necessary certificate of confirmation of grant indicated that the estate was shared between the two houses of the deceased more or less in terms of the provisions of s.40 (1) of the Law of Succession Act and according to the petitioners particularly the first petitioner, the

children of the deceased who did not fall within any of the two houses were accommodated in either of the two houses for necessary distribution of the estate.

In sum, the present application as noted hereinabove is devoid of merit and is hereby dismissed with each party bearing their own costs.

J.R. KARANJAH

J U D G E

[Read and signed this 16TH day of JUNE 2021]