

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

SUCCESSION CAUSE NO.260 OF 2009

IN THE MATTER OF THE ESTATE OF THE LATE OKWARA LUKANO.....DECEASED

BETWEEN

JOSEPH OTSIENO LUKANO.....PETITIONER

VERSUS

BONVENTURE OKWARO ODONGO.....1ST RESPONDENT

FRANCIS OMONDI ATCHOLA.....2ND RESPNDENT

R U L I N G

[1] The application at hand is the one dated 5th February 2021 made by the second respondent **Francis Omondi Atchola**, under Rule 49 and 73 of the Probate & Administration Rules seeking the primary order that the proceedings of and orders made on 28th September 2020 be set aside and that the first respondent's application dated 15th August 2018 be set down for hearing inter-parties.

As may be borne by the record, the history leading to the application is long having commenced in the year 2009. Several applications have since been brought and determined or withdrawn or even abandoned altogether. Among such applications was the application dated 15th August 2018 in which the first respondent, **Bonventure Okwara Odongo**, applied for revocation or setting aside of the certificate of confirmation of grant issued on 2nd November 2010 to the petitioner, **Joseph Otsieno Lukano**, as the duly appointed administrator of the estate of the late Okwara Lukano (**deceased**) which comprised of parcel of land described as **Marachi/Kingandole/1693**.

[2] The application came up for hearing after a period of approximately two (2) years on the 28th September 2020 and upon hearing both the applicant/objector and the petitioner, the court ruled that the confirmed grant be rectified to include the objector. In essence, the impugned certificate of confirmation of grant was not revoked as applied by the objector. It was merely rectified to include the objector so that he may be granted a share of the estate property, part of which he purchased from the deceased as acknowledged by the petitioner.

Apparently, to effect the court's ruling, the objector took out summons for rectification of grant dated 15th October 2020. This was an erroneous move as the rectification sought had already been granted in the ruling of the court made on 28th September 2020, which was confined to the inclusion of the name of the objector in the impugned certificate of confirmation of grant dated 2nd November 2010, without specifying the extent of his share in the estate property which invariably necessitated the petitioner and the respondents to agree and come up with a fresh mode of distribution of the estate property providing for all the rightful beneficiaries including the objector.

[3] Be as it may, having heard the present application on the basis of the supporting grounds and the written submissions by the objector/first respondent and the second respondent/applicant and while noting that the petitioner has lost interest in this matter even though he seems to be in support of the objector's cause as may be deciphered from his replying affidavit dated or filed on 9th March 2021, this court holds the opinion that the applicant/second respondent has not provided sufficient and satisfactory grounds for exercise of the court's inherent powers in his favour. There is no proper or any material to show that the proceedings of the 28th September 2020 were irregular. The necessary parties appeared before this court and stated their respective positions. Thereafter, the court rendered its ruling. Any aggrieved party had the liberty to appeal the ruling in a higher court. The applicant was not included as a beneficiary in the impugned certificate of confirmation of grant dated 2nd November 2010. His "*locus standi*" in the objector's application dated 15th August 2018 was doubtful even though he was listed as the second respondent in the application. Suffice to say that the second respondent was erroneously included in this matter by the objector who therefore must bear his costs of this application.

In sum, the application is wanting on merit and is hereby dismissed with the objector/first respondent bearing the applicant/second respondent's costs.

[DATED AND SIGNED THIS 28TH DAY OF SEPTEMBER 2021]

J.R. KARANJAH

J U D G E