



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT HOMA BAY**

**PROBATE & ADMINISTRATION NO.20 OF 2019**

**IN THE MATTER OF THE ESTATE OF: MARSALUS ANYANGO ABIERO.....DECEASED**

**BETWEEN**

**ISHMAEL OCHIENG OKULO.....OBJECTOR/APPLICANT**

**AND**

**FRANCIS OBOP ANYANGO.....PETITIONER/RESPONDENT**

**RULING**

1. Ishmael Ochieng Okulo, the applicant herein, moved the court by way of summons for revocation of grant dated 7<sup>th</sup> October, 2019 premised on the following grounds:

- a) The applicant and his siblings are grandchildren of Marsalus Anyango Abiero – deceased, having been born to Andrea Okulo – also deceased, who the first was born to Marsalus Anyango Abiero.
- b) The deceased - Marsalus Anyango Abiero died intestate, leaving the respondent/petitioner, the applicant and his siblings as his beneficiaries;
- c) That although the respondent was aware of their existence and entitlement to the estate of deceased, he went ahead to do succession without informing and/or involving them and without disclosing to the court the fact of our existence and entitlement;
- d) That the estate of the deceased, and particularly WEST KARACHUONYO /KOKOTH “B”1517 is what the parties herein have as their ancestral land, and where the applicant has established his home thereon, with the blessing of all of the elderly family members;
- e) That the respondent has not only transferred the property into his name, but has also sold it out to third parties and is on the verge of transferring the same to the said third parties, which fact will amount to gross injustice as the applicant and his siblings will be deprived;
- f) That in the affidavit filed by the respondent in support of his application to have his grant confirmed, the respondent knowingly deceived court that he is the only beneficiary, and went further to aver that the land above mentioned was to be transferred to him in whole;
- g) That due to the concealment of material fact and outright fraud by the respondent, it is just and equitable that the orders sought herein be granted.

2. The application was opposed by the petitioner/respondent on grounds:

- a) That the application lacks merit and is otherwise an abuse of court process;
- b) That the objector/applicant lacks locus standi to institute this proceedings in his own capacity and or sued me in this matter since he is the grandson to my late father and he has no powers whatsoever by law to claim that he wanted to be enjoined as a co-administrator with me in the estate of my late father;

c) That the deceased herein whose estate is the subject of instant proceedings is known as Marsalus Anyango Abiero and the said deceased passed away on 1<sup>st</sup> December, 1999;

d) That the deceased Marsalus Anyango Abiero was a polygamous man having married to two wives and was blessed with six(6) children namely:-

**Wife No.1; TABITHA AOKO – DECEASED**

*i. Philip Kwaya Anyango – 1<sup>st</sup> born son deceased but not survived by any one and was given and or assigned LR. No. WEST KARACHUONYO/KOKOTH “B”/1527 & 1279 by his father;*

*ii. Andrea Okulo Anyango – 2<sup>nd</sup> born son, deceased but survived by wife and children and was given and or assigned L.R. NO. WEST KARACHUONYO/KOKOTH “B”/1204 by his late father. He is the father of the objector/applicant herein Ishmael Ochieng Okulo;*

*iii. Vincent Ochoo Anyango – 3<sup>rd</sup> born son, deceased but survived by wife and was given and or assigned L.R. No. WEST KARACHUONYO/KOKOTH “B”/1520 by his late father.*

- The late **Vincent Ochoo Anyango** was given and or assigned **LR. No. WEST KARACHUONYO/KOKOTH “B”/1520** since it was the ancestral land where his mother’s homestead was built and since he was the last born son, he was given the said parcel of land as his inheritance by his late father.

**Wife No.2, ANN AWUOR – DECEASED**

*i. Risantus Abiero Anyango – 1<sup>st</sup> born son, deceased but not survived by anyone and was given and or assigned LR. NO. WEST KARACHUONYO/KOKOTH “B”/1518 by his late father.*

*ii. John Obonyo – 2<sup>nd</sup> born son, deceased but survived by children and was given and or assigned LR. No. WEST KARACHUONYO/KOKOTH “B”/1519 by his late father;*

*iii. Francis Obop Anyango – 3<sup>rd</sup> born son, alive and is the petitioner/respondent herein and was not given and or assigned any parcel of land by my late father when the sub-divisions of the parcels of lands were done to my five (5) brothers since I knew that as the last born son to my late father, I would automatically get my inheritance in accordance with the Luo customs and traditions from the two parcels of land owned by my late father, that is LR.NO. WEST KARACHUOYNO/KOKOTH “B”/1201 & 1517 respectively.*

e) That I know of my own knowledge that at the time of the demise of my late father, he had already sub-divided his parcels of lands to his four (5) children inclusive of the objector/applicant’s father **ANDREA OKULO ANYANGO**;

f) That I know of my own knowledge that the parcels of lands which were owned by my late father are land parcels **LR. No. WEST KARACHUONYO/KOKOTH “B”/1201 & 1517** wherein **LR.NO. WEST KARACHUONYO/KOKOTH ‘B’ 1517** is where the homestead of my late mother was built and it was the parcel of land which I inherited as the last born son of my late father;

g) That I know of my own knowledge that I applied for letters of grant in land parcel **LR. No. WEST KARACHUONYO/KOKOTH “B”/1517** which application was done procedurally lawfully since it was one of the parcel of land owned by my late father leaving **LR. No. WEST KARACHUONYO/KOKOTH “B”/1201** untouched;

h) THAT If the objector/applicant who is the grandson to my late father is made one of the co-administrator herein, it would amount to a breach of the very principles of laws since he is not entitled to be administrator I the estate of my late grandfather since he is not one of the sons born by my late father albeit by law he is entitled to get a share from the estate of his late father **ANDREA OKULO ANYANGO** who had already been given and or assigned **LR. No. WEST KARACHUONYO/KOKOTH “B”/1204** by my late father;

i) That I know of my own knowledge that the objector/applicant has come to court with unclean hands since he is aware that the only estate he would administrate over and or claim ownership of the same is the estate of his late father **ADNREA OKULO ANYANGO** not the estate of my father as purported by him;

j) That it is trite law that the application is frivolous, vexatious and is intended to embarrass the very principles of laws hence same is fronted with unjustifiable reasons thereby I denied all the averments made therein in toto; and

That in light of the foregoing, I am humbled to request this Honorable court to maintain the grant issued to me on the 19<sup>th</sup> day of July 2017 and confirmed on 28<sup>th</sup> February 2019 and the objector/applicant’s application to revoke the grant confirmed be dismissed with costs to the petitioner/respondent

3. 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—**

**(a) that the proceedings to obtain the grant were defective in substance;**

**(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;**

**(c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;**

4. The respondent in his grounds of opposition acknowledged the existence of other beneficiaries who also include the applicant herein. He however failed to disclose this fact in Form P & A. 5. He indicated himself as the sole beneficiary of the estate of the deceased and left the applicant and the other beneficiaries out. I therefore find that the grant was obtained fraudulently and by means of untrue allegations.

5. Any transaction that may have been done pursuant to the impugned grant is equally revoked and the estate to revert to the name of the deceased herein.

6. The application is allowed with costs. The applicant is hereby appointed a co-administrator and they ought to file proposed mode of distribution within 30 days.

**DELIVERED AND SIGNED AT HOMA BAY THIS 19TH DAY OF OCTOBER, 2021**

**KIARIE WAWERU KIARIE**

**JUDGE**