



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

SUCCESSION CAUSE NO. 503 OF 2006

IN THE MATTER OF THE ESTATE OF THE LATE ISAAC WINGFIELD OKELLO (DECEASED)

ALFRED JOHN ONYANGO & OTHERS.....APPLICANTS/OBJECTORS

AND

SARAH TAABU ONYANGO.....RESPONDENT/PETITIONER

RULING

Before me is an application dated 23rd October 2019, which sought the revocation or annulment of the grant issued on 16th November 2006.

1. The grounds upon which the application was founded are as follows;

“1. The proceedings to obtain the grant were defective.

2. The subsequent judgement in (Kisumu Criminal Case No. 318 of 2015 R Vs Sarah Taabu Onyango) has proved beyond doubt that the petitioner/administrator who was convicted for forgery and uttering false documents while presenting the petition for grant of letters of administration herein.

3. Further, it is untenable for the said Sarah Taabu Onyango under the doctrine of ex turpi causa non oritur action (no cause of action can arise out of an immoral cause) to seek to perpetuate a further illegality by seeking to confirm the grant herein through the application dated 23rd August 2019.”

2. The application was supported with an affidavit sworn by **ALFRED JOHN ONYANGO**.

3. The said Alfred John Onyango is a son of the deceased, **WINGFIELD OKELLO**. He is therefore one of the beneficiaries of the estate of his late father.

4. The Applicant asserted that the grant was issued to the Respondent, **SARAH TAABU ONYANGO**, on the strength of forged documents.

5. It is common ground that the Respondent was convicted for the offence of forgery of an affidavit of Wingfield Okello Agutu, purporting it to have been signed by the said Wingfield Okello Agutu.

6. The affidavit in question was intended to confirm that the Respondent was married to the deceased.

7. The Respondent was also convicted for the offence of uttering a false document. The document which was allegedly uttered is the forged affidavit of the deceased, which the Respondent allegedly presented at the High Court registry when the

Respondent petitioned the court for the grant of Letters of Administration intestate.

8. In respect to the offence of forgery, the learned trial magistrate sentenced the Respondent herein to a fine of Kshs 40,000/= or in default, 12 Months imprisonment.

9. And for the offence of uttering a false document, the Respondent herein was sentenced to a fine of Kshs 30,000/=, or in default, 9 Months imprisonment.

10. The application before me was lodged after the Respondent had been convicted. On the strength of the Respondent's said conviction, the court would have had no option but to revoke the grant.
11. However, the Respondent canvassed her appeal successfully, and on 4th February 2021, the High Court quashed the conviction on both counts.
12. Nonetheless, the evidence before the trial court proved that the signature on the affidavit which had allegedly been signed by Wingfield Okelo Agutu, was not his.
13. It therefore remains a proven fact that the signature was a forgery.
14. The Respondent was exonerated only because it was not proved that she was the person who had forged the said signature.
15. And in relation to the offence of uttering a false document, the High Court found that there was no evidence that the Respondent herein is the person who uttered the affidavit, by presenting it at the Registry.
16. Indeed, as the affidavit did not bear the court stamp of the court, there was some doubt about whether or not the said affidavit was presented at the court registry.
17. Nonetheless, the signature on the affidavit is still a forgery, as the Document Examiner found that it was not done under the hand of Wingfield Okelo Agutu.
18. In the event, the Court is unable to establish whether or not the forged affidavit had any bearing on the decision to grant the letters of administration to the Respondent.
19. In any event, I find that the Objector/Applicant participated in the proceedings that led to the issuance of the grant which he now seeks to have revoked.
20. And even after the court had issued the grant, in favour of both the Applicant and the Respondent herein, the Applicant made use of the said grant. Exhibit "**STO7**" is a letter dated 29th April 2010, which the Applicant wrote to the Harvesting and Transport Manager of Kibos Sugar Factory. In the said letter, the Applicant stated as follows;

"I am one of the sons of the late Isaac Wingfield Okelo Ogutu and one of the Administrators of the late's estate.

That I jointly took out letters with Sarah Taabu Onyango, who is not in the country at the moment.

I kindly request your good office to urgently assist me by harvesting my cane of 7 ¼ acres, age 36 months P.C. & III R variety Co.617...."

21. If there were any issues about the integrity of the proceedings which led to the issuance of the grant, I find that the Applicant was an integral part of that process. He cannot purport to challenge the integrity of a process that he was fully a part of, yet he would now wish to vilify the very person with whom he had initially sought the letters of administration.
22. I hold the considered view that if the Respondent's actions or omissions were found wanting in integrity, the court would also have no alternative but to equally vilify the Applicant, as he was a part and parcel of the process in issue.
23. In my considered view, the Applicant has failed to prove that the proceedings that led to the grant of the letters of administration, were defective.
24. I further find that the Applicant failed to prove that the Respondent was seeking to perpetuate an illegality as alleged or at all.
25. In the result, the application dated 23rd October 2019 lacks merit; and the same is dismissed. The Applicant will pay to the Respondents, the costs of the application.

DATED, SIGNED and DELIVERED at KISUMU This 18th day of October 2021

FRED A. OCHIENG

JUDGE