



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT BUSIA**

**SUCCESSION CAUSE NO.184 OF 2006**

**IN THE MATTER OF THE ESTATE OF ODONGO KWENA OMOTO (DECEASED)**

**COLOSTIKA APONDI MURABULA.....APPLICANT**

**VERSUS**

**FREDRICK WANYAMA OGOLA.....PROTESTOR/OBJECTOR**

**R U L I N G**

**[1]** The grant respecting the estate of Odongo Kwena Omoto (**Deceased**) was issued on 20<sup>th</sup> February 2008, to Vincent Kwena Oduor (**petitioner**) and was confirmed on 4<sup>th</sup> November 2008.

The estate property comprising of land parcel No.Marachi/Elukongo/1175 was shared between the petitioner and Fredrick Wanyama Ogolla. However, in the year 2018, an objection to the grant and confirmation thereof was filed by Colostika Apondi Murabula (**objector**) on the main ground that she was a daughter of the deceased but was excluded as a beneficiary. The matter came up for hearing in court on 26<sup>th</sup> November 2018. In the process, the petitioner conceded the objection and the court upheld the objection with orders that the grant and the resultant certificate of confirmation of grant be revoked.

**[2]** Thereafter on the 11<sup>th</sup> January 2019, the petitioner filed a fresh summons for confirmation of grant. Unfortunately, the petitioner passed away before the matter was resolved. This prompted Colostika Apondi Murabula, to apply for substitution of the petitioner. The court allowed the application on 16<sup>th</sup> December 2020 and Colostika Apondi Murabula became the new petitioner and administrator of the estate of the deceased. An amended grant of letters of administration and an amended certificate of confirmation of grant were both issued on 23<sup>rd</sup> March 2021 to reflect the changes. However, on the 7<sup>th</sup> June 2021, the petitioner filed fresh summons for confirmation of grant arguing that the amended certificate of confirmation of grant was erroneously issued on the basis of the original grant which was issued on 4<sup>th</sup> November 2008 and revoked on 26<sup>th</sup> November 2018.

**[3]** Indeed prayer (2) of the summons is for cancellation of the amended certificate of confirmation of grant issued on 23<sup>rd</sup> March 2021. The record shows that the prayer is for granting as the impugned certificate was erroneously issued as an amended version of a previous certificate which had already been revoked thereby rendering it null and void “ab-nitio”

Prayer (2) is accordingly granted. Prayer (1) therefore remains the only substantial prayer for determination. In that regard, the petitioner proposes that the estate property be shared between herself and the estate of the previous departed petitioner/beneficiary as indicated in paragraph 7 of the supporting affidavit. The interested party/respondent, Fredrick Wanyama Ogola was left out of the proposal, hence share of the estate. He therefore filed the affidavit of protest dated 14<sup>th</sup> July 2021.

**[4]** The protest was canvassed by way of written submissions which were filed by the interested party/protestor on 26<sup>th</sup> October 2021 through **J.V. Juma & Co. Advocates**. The petitioner filed her submissions on 28<sup>th</sup> October 2021.

The basic issue arising for determination is whether the interested party has shown sufficient cause why the grant should not be confirmed as proposed by the petitioner and why he should be included as a beneficiary of the estate as a purchaser of part of the estate property.

In her supporting affidavit the petitioners accuses the interested party of having colluded with the previous departed administrator to fraudulent take away part of the estate property and deprive her of her rightful inheritance. She therefore implied that any purchase of part of the estate property by the interested party was both fraudulent and unlawful as the purported purchaser was effected even before the succession proceedings commenced. Besides, the interested party did not purchase the property from the deceased but the late previous administrator.0000

[5] The fact that part of the estate property was not sold to the interested party by the deceased but the late previous administrator is not disputed. The Chief's letter dated 23<sup>rd</sup> October 2006, did not include the interested party as a beneficiary of the estate on account of being a bona fide purchaser, rather it acknowledged him as a contributor of money towards the institution of the succession case by the late administrator.

A copy of a land Sale Agreement annexed to the petitioners answer to the protest indicates that indeed the purported sale of part of the estate property to the interested party was undertaken by the late administrator a few days after the previous grant was confirmed on 4<sup>th</sup> November 2008. This meant that the late administrator had the power to deal with the estate in the manner he deemed fit including selling part thereof to the interested party. However, any such dealing was highly dependent on the validity of the enabling document and/or instrument i.e. the certificate of confirmation of grant issued to the previous late administrator on 4<sup>th</sup> November 2008.

[6] The court subsequently revoked that certificate on the 26<sup>th</sup> November 2018 at the instance of the present petitioner. The effect of the revocation was invalidation of any dealing and/or transaction which might have been conducted on the strength of the certificate. In essence, the late petitioner no longer had any power to deal with the estate property and any power that he may have exercised on the basis of the revoked certificate became null and void "ab-nitio."

In the circumstances, the remedy available to the interested party was a claim for damages against the late previous administrator or his estate. His claim for a beneficial interest in the estate property is clearly untenable in these proceedings but would be tenable in a proper civil action against the estate of the late administrator before a court with competent jurisdiction.

[7] It is quite intriguing that the interested party avoided to mention anything about the sale agreement entered between himself and the late administrator in his affidavit of protest and the submissions and instead dwelled on the manner in which the estate property was sub divided in his favour and others. Yet, his name featured under the list of liabilities in the affidavit in support of the original petition for grant of letters of administration by the late administrator. This strongly implied that most likely than not, he purchased part of the estate property from the late administrator even before the previous grant was issued and confirmed. This demonstrated that his dealing with the estate property at the behest of the late administrator was not bona fide and clearly amounted to an illegality.

[8] For all the foregoing reasons, it would follow that the interested party has failed to show good or sufficient cause why the grant should not be confirmed as prayed by the petitioner and also failed to show why he should be included as a beneficiary of the estate of the deceased.

In sum, this protest is devoid of merit and is hereby overruled with the result that the grant issued to the petitioner on 23<sup>rd</sup> March 2021, be and is hereby confirmed as proposed by the petitioner in paragraph 7 of the affidavit in support of the summons for confirmation of grant dated 7<sup>th</sup> July 2021.

Ordered accordingly.

**J.R. KARANJAH**

**J U D G E**

**[READ & SIGNED THIS 30TH DAY OF NOVEMBER 2021]**