



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

SUCCESSION CAUSE NO.336 OF 2013

IN THE MATTER OF THE ESTATE OF THE LATE JUMA ODUNDO KHASEKE (DECEASED)

JOHN OPIYO OWINO .....OBJECTOR

VERSUS

COLOMITINA NAMBOKA JUMA

AFRICANUS ABRAHAM EGESA...PETITIONERS

R U L I N G

[1] The application vide the summons for revocation of grant dated 31<sup>st</sup> January 2019, was filed by John Opiyo Owino (**objector**) against Colomitina Namboka Juma and Africanus Abraham Egasa (**petitioners**) on grounds the grant of letters of administration obtained by the petitioners was so obtained in proceedings which were directive in substance and fraudulently by the making of false statements and concealment of material facts.

The grounds on which the application was based are set out in the summons and fortified by the supporting affidavits of the applicant and one Alfred Edwin Khaseke. The petitioners opposed the application on the basis of the grounds of opposition filed herein on 12<sup>th</sup> February 2019. The hearing of the application was by way of written submissions. Both parties filed their submissions through **J.V. Juma & Co. Advocates** and **Obura Obwatinya & Co. Advocates**, respectively.

[2] A consideration of the application and the rival submissions by this court reactivated that it can only be resolved in one way or the other by re-tracing the footsteps leading to the issuance of the impugned grant to the two petitioners who are relatives of the objector and the three of them in particular the first petitioner and the objector trace their lineage to the deceased Juma Odundo Khaseke. Accordingly, the petition was made on 19<sup>th</sup> September 2013 by the two petitioners in their respective capacities as daughter and paternal uncle of the deceased. The first petitioner and her sister were listed as the beneficiaries along with the grandchildren of the deceased i.e. Jackson Okoth Khaseke (**objector**) and Judith Bwire Khaseke. They were all confirmed as such in the Chief's letter dated 26<sup>th</sup> July 2017.

[3] After all the prerequisites were undertaken the grant of letters of administration intestate was eventually issued to the two petitioners on 6<sup>th</sup> June 2014, and its confirmed on 18<sup>th</sup> February 2015. The estate property confirming of land parcels Bukhayo/Matayos/1880 and Bukhayo/Matayos/1992 was thus distributed as follows:-

(1) Parcel No.1880 – to Nyongesa Wandera Maurice, wholly.

(2) Parcel No.1882 – to Colomitina Namboka Juma and Africanus Abraham Egasa to hold in trust for the minors JOK and JBK until

They attain the age of 18 years.

[4] Few months thereafter, the objector filed an application for the revocation of the grant vide the summons for revocation of grant dated 25<sup>th</sup> January 2016, but before it could be heard, and determined, a notice of motion dated 9<sup>th</sup> March 2017, was filed by one John Opiyo, seeking to be substituted as the objector in this matter in place of Jackson Okoth Juma Khaseke. The motion was however, withdrawn in court on the 28<sup>th</sup> January 2019 and the pending application for revocation of grant dated 25<sup>th</sup> January 2016, was seemingly reactivated for hearing on 13<sup>th</sup> May 2019, but was adjourned to 22<sup>nd</sup> October 2019 and again to 28<sup>th</sup> January 2020 and yet again to 9<sup>th</sup> March 2020, when the parties were directed to take an agreeable hearing date at the registry. This was done and was brought to the attention of the court that a notice of preliminary objection dated 19<sup>th</sup> February 2018, by the petitioners was to be disposed of. In that regard, the court directed that the

preliminary objection be disposed of by written summons.

[5] Ironically, the said preliminary objection was in respect of the application for substitution of the objector dated 9<sup>th</sup> March 2017, which had long been withdrawn on 28<sup>th</sup> January 2019. Nonetheless the objection was withdrawn in court on 12<sup>th</sup> May 2021 and a second application for revocation of grant dated 31<sup>st</sup> January 2019 and filed herein on 8<sup>th</sup> February 2019, was fixed for mention on 13<sup>th</sup> July 2021 when it was directed that the application be canvassed by way of affidavit evidence and written submissions. This is the application subject of this ruling and it is clearly an abuse of the court process considering that a similar application dated 25<sup>th</sup> January 2016 and filed herein on 26<sup>th</sup> January 2016, was never withdrawn and remains pending to date. The alleged withdrawal on 28<sup>th</sup> January 2019 was an ambiguous as the application withdrawn was not specified by date. In any event, the application dated 9<sup>th</sup> March 2017, was what was stated for hearing on that date.

[6] To made matters worse, the former application dated 25<sup>th</sup> January 2016 was made by Jackson Okoth Juma Khaseke as the objector, while the latest application dated 31<sup>st</sup> January 2019, was made by John Opiyo Owino as the objector , yet he was neither substituted as such objector in place of Jackson Okoth Juma Khaseke. Therefore, in exercise of the powers conferred to this court by **Rule 73** of the **Probate & Administration Rules**, both applications are hereby dismissed for being an abuse of the court process.

Even if both applications were to be considered on the merit, the record clearly disproves and discredits the objector's allegations against the petitioners that they obtained the subject grant in proceedings which were defective in substance or by fraud and concealment of material acts. The objectors did not establish by necessary credible evidence that the petitioners obtained the grant unlawfully as implied in the two applications.

[7] In sum, both applications are devoid of merit and are hereby dismissed on that basis and for being an abuse of the court process.

The petitioners shall have the costs of both applications.

Ordered accordingly.

**J.R. KARANJAH**

**J U D G E**

**[READ & SIGNED THIS 25<sup>TH</sup> DAY OF NOVEMBER 2021]**