

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

SUCCESSION CAUSE NO.103 OF 2006

IN THE MATTER OF THE ESTATE OF ANZELIMO WALUCHIO IMENETI (DECEASED)

EKESA JAMES IMENETI.....PETITIONER

VERSUS

1. JOHN MUNYEKENYE IMENETI

2. CHRISPINUS EKESA IMENETI.....OBJECTOR/APPLICANT

R U L I N G

[1] The subject grant respecting the estate of the late **Anzelimo Walucho Imenet**, was issued on **2nd November 2007** to Ekesa Imenet Waluchio (**petitioner**), but on the 30th May 2008, John Munyekenye Imenet (**objector**) applied for its revocation vide the summons for revocation of grant dated 30th April 2008. Unfortunately, it was thereafter reported that the objector passed away and by a consent letter dated 12th June 2013 and filed herein on 7th May 2014, the parties agreed to have Chrispinus Ekesa Imenet substituted for the late objector for purposes of this matter. Chrispinus is now the objector and not the second objector or defendant as described in some of the pleadings.

[2] Be that as it may, the objector's grounds in support of the objection to the issuance of the grant to the petitioner and to revocation of the grant with a view to issuance of a fresh grant in his name together with that of the petitioner and one Paul Onyango Imenet are based on the facts that the petitioner obtained the grant by misrepresentation and non disclosure of material information, in that he failed to list all the rightful beneficiaries and to disclose the existence of a trust on the estate property which was allegedly family land described herein as land parcel **No.Bukhayo/Buyofu/354**.

[3] The foregoing supporting grounds were contested by the petitioner who contended that the estate property belonged exclusively to the deceased and if any beneficiaries were not listed then it's only those linked to the family of the deceased. The petitioner therefore implied that the estate property was never jointly owned by the deceased and his brothers, neither was it held in trust for his benefit and those of his brothers. That, the objector and indeed the families of the deceased's late brothers are not beneficiaries of the estate property.

[4] The onus to establish the grounds in support of the objection, hence the allegations made against the petitioner lay with the objector but he has failed to do so for reasons that **firstly**, the certificate of search contained in the record establishes that the estate property belonged to the deceased to the exclusion of any other person. In the premises, the allegation by the objector that the property was family property held in trust by the deceased for his benefit and that of his brothers was disproved and discredited. However, the search certificate does indicate that the brothers of the deceased i.e. John Munyekenye Imenet and Paul Imenet registered a caution in 1993 claiming licensee interest in the property. This meant that they were in occupation of part of the estate property on licence from the deceased rather than part owners of the property.

Secondly, with regard to the beneficiaries of the estate, the Chief's letter dated 22nd August 2006, indicated that the deceased was survived by his wife and nine children (**i.e 4 sons and 5 daughters**) among them the petitioner, the youngest of the children.

[5] The objector or any members of the families of the deceased's brothers were not listed as beneficiaries, as they were not true beneficiaries of the estate of the deceased although the caution registered by them on 18th May 1993 was acknowledged by the Chief.

In essence, the petitioner was a true beneficiary of the estate of the deceased and in relation to the objector stood first in priority in petitioning for the grant. As the deceased was survived by his wife and children, the objector as a son of the deceased's late brother did not fall in the order of preference in petitioning for the grant neither did his late father whose alleged proprietary interest in the estate property lacked substance and proof and would in any event not be an issue for determination by a Succession Court but the Environment and Land Court.

In the upshot, the present application is lacking in merit and is hereby dismissed with each party bearing their own costs and the petitioner having the liberty to take out the necessary summons for confirmation of grant within the next six (**6**) months from this date hereof. In default, the matter be referred to the public trustee for necessary distribution of the estate among the rightful beneficiaries.

J.R. KARANJAH

J U D G E

[Read & signed this 23RD day of **NOVEMBER 2021**]