



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT BUSIA**

**PROBATE & ADMINISTRATION NO.369 OF 2013**

**IN THE MATTER OF THE ESTATE OF:**

**LUCY EDNA OUMA.....DECEASED**

**BETWEEN**

**CORNEL ODIAGA OUMA.....1<sup>ST</sup> PETITIONER/ RESPONDENT**

**COLLETTA ODIAGA OUMA.....2<sup>ND</sup> PETITIONER/RESPONDENT**

**AND**

**ANDREW LUMUMBA KECHULA.....OBJECTOR/APPLICANT**

**RULING**

1. There are two outstanding applications herein. The first application is dated 14<sup>th</sup> January 2015 by Cornel Odiaga Ouma and Colletta Odiaga Ouma the petitioners herein. The application was brought by way of chamber summons under section 45 of the Law of Succession Act and rule 40 of the Probate and Administration Rules. They are seeking the following orders:

a. That this court issues an order compelling the objector/respondent to surrender possession of the property of the estate of the late Lucy Edna Ouma to the administrators of the estate.

b. That costs be in the cause.

2. The application was opposed by the objector who contended that he was a spouse of the deceased.

3. The applicant/objector herein filed summons for revocation of grant dated 19<sup>th</sup> January 2015 under section 76 of the Law of Succession Act and Rules 44 & 73 Probate and Administration Rules. He is seeking the following orders:

a. That the grant issued on 22<sup>nd</sup> July 2014 to the petitioners and confirmed on 4<sup>th</sup> December 2014 be revoked/annulled.

b. That plot No. 445 Budalangi be struck out from the proceedings herein.

c. That a fresh grant be issued to the objector.

d. That the petitioners be restrained from interfering with the estate.

e. That costs be provided for.

4. The application is premised on the following grounds:

a. That the grant was obtained fraudulently by making a false statement or by concealment from court of something material to the case.

- b. That the grant was obtained by means of untrue allegation of a fact essential in point of law to justify the grant.
- c. That the objector solely purchased a portion of plot No. 445 Budalangi which the whole is registered in the name of a third party.
- d. That the petitioners did not disclose the all assets and liabilities of the deceased.
- e. That the cause was filed secretly without the consent of the objector.

5. The application was opposed on the following grounds:

- a. That the applicant lacks *locus standi* for he has no beneficial interest in the estate of the deceased.
- b. That the objector lacked capacity to contract any other marriage after contracting a marriage under African Christian Marriage and Divorce Act, cap. 151 laws of Kenya.

6. Both applications were heard by way of viva voce evidence. Subsequently, submissions were filed and exchanged.

7. Upon my perusal of the supporting and replying affidavits, the submissions of the parties as well as the record, the following facts emerge:

- a. That in spite of the petitioners denouncing the objector as a stranger, he was married to the deceased. The two during the lifetime of the deceased conducted themselves as husband and wife. Dowry was paid and received by the petitioners and they cannot be heard to turn round and contend that there was no marriage.
- b. Evidence on record has established that the objector purchased part of plot No.445 Budalangi. This parcel of land cannot therefore form part of the estate of the deceased.
- c. The petitioners evidently concealed material facts from the court.

8. From the foregoing analysis of the evidence on record, that the application 14<sup>th</sup> January 2015 is dismissed while the application for revocation of grant is allowed. Each party to meet own costs.

9. The objector and Cornel Odiaga Ouma are hereby appointed joint administrators of the estate of Lucy Edna Ouma. They are ordered to file a proposal for confirmation of grant within 30 days. Failure to do so, the grant will automatically be revoked.

**DELIVERED and SIGNED at BUSIA this 25<sup>th</sup> day of February, 2020**

**KIARIE WAWERU KIARIE**

**JUDGE**