



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAJIADO**

**MISC. CAUSE NO. 18 OF 2019**

**IN THE MATTER OF THE ESTATE OF OLTOKOKOI MERIT KATIYU(DECEASED)**

**AND**

**IN THE MATTER OF SUCCESSION CAUSE NO 16 OF 2003**

**BETWEEN**

**ENASO ENE PASUE MALEI.....1<sup>ST</sup> APPLICANT**

**ROTIKEN OLE MERIT OLTOKOKOI.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**WILLIAM SONYOI OLTOKOKOI.....1<sup>ST</sup> RESPONDENT**

**JOHNSONNKATISON OLTOKOKOI.....2<sup>ND</sup> RESPONDENT**

**JOSEPHBRADLEYWAWERU GITARI.....3<sup>RD</sup> RESPONDENT**

**RULING**

1. By summons dated 4<sup>th</sup> April, 2019 and filed in court on the same day, Enaso Ene Parisue Malei and Patiken Ole Merit Oltokuloi, the applicants, moved this court for orders revoking the grant of administration intestate made to William Sonyoi Oltokuloi and Johnson Ntutison Oltolukoi by the Chief Magistrate's Court on 13<sup>th</sup> February, 2004 and confirmed on 8<sup>th</sup> June, 2006.

2. The grounds upon which the summons is made are on the face of the summons and in the affidavit in support sworn by the 1<sup>st</sup> applicant on 4<sup>th</sup> April, 2019. The grounds which the summons is premised are that; the deceased died on 14<sup>th</sup> August, 1987 and a grant of representation was issued and confirmed by the Chief Magistrate Court for the 1<sup>st</sup> and 2<sup>nd</sup> respondents; that the deceased left behind 9 beneficiaries and a widow who has since died; that the deceased left only one parcel of land **Kajiado/Kaputiei North/800** measuring about one hundred and twenty five (125) acres; that the 1<sup>st</sup> and 2<sup>nd</sup> respondents petitioned for a grant of administration without consent of the other beneficiaries which was issued and confirmed without their knowledge.

3. The applicants state that the process was done fraudulently; that their signatures were forged and that they did not give consent to the filing of the petition. The applicants further state that the 1<sup>st</sup> and 2<sup>nd</sup> respondents obtained the grant fraudulently and had it confirmed but did not distribute the land to the beneficiaries. They state that they do not know how to read and write and could not therefore have signed the consent to confirmation of grant.

4. They further state that they were not aware that the land had been sold until the 3<sup>rd</sup> respondent attempted to fence off the land.

5. The affidavit in support sworn by the 1<sup>st</sup> applicant reiterates the grounds in support of the summons their father died intestate and left behind nine children and a widow who is now deceased; that some of the children of the deceased are also deceased and that the deceased left behind only one property. They restate that the 1<sup>st</sup> and 2<sup>nd</sup> respondents obtained a grant of representation intestate without their knowledge and consent and that the documents filed that they signed the documents were forged. She points out that although the beneficiaries are named as nine, those listed in the consent supporting confirmation are only three. She also deposes that the beneficiaries did not appear in court during confirmation of grant.

6. She further deposes that the parcel of land was sold before the 1<sup>st</sup> and 2<sup>nd</sup> respondents obtained a grant of representation thus confirming that the entire process was fraudulent.

7. The 1<sup>st</sup> and 2<sup>nd</sup> respondents were served and were given time to file responses to the summons but did not do so. They applied for time to file a response but their request was declined, the court noting that they had been given sufficient time to file a response but had failed to take advantage of time. The court therefore ordered that the summons proceeds to hearing.

8. During the hearing of the summons, Mr. Odhiambo, learned counsel for the applicant submitted that the grant was obtained fraudulently and without knowledge or consent of the other beneficiaries including the applicants. He argued that the beneficiaries were not consulted and did not sign the consent form; that one beneficiary was completely excluded and that all beneficiaries were disinherited and did not get a share of their father's estate and have nowhere to reside since the whole land was sold by the administrators without their consent.

9. Counsel further argue that the sale of the land, if any, was done before the 1<sup>st</sup> and 2<sup>nd</sup> respondents had obtained a grant of administration and therefore that sale was illegal. He urged the court to revoke the grant issued to the 1<sup>st</sup> and 2<sup>nd</sup> respondents and set aside the certificate of confirmation.

10. The 1<sup>st</sup> respondent addressed the court orally and admitted that the applicants and the rest of the family members did not know that they had applied for grant of letters of administration. He also admitted that the applicants and the rest of the family did not sign the consent forms and that none of the beneficiaries got a share of the estate. He therefore did not oppose the summons,

11. The 2<sup>nd</sup> respondent, just like the 1<sup>st</sup> respondent admitted that the family did not know that they had applied for grant. He also did not oppose the summons. According to him, they did not sell the whole land but a portion of it.

12. I have considered the summons, the supporting affidavit and the arguments made on behalf of the applicants. I have also considered the admissions made by the 1<sup>st</sup> and 2<sup>nd</sup> respondents and perused the record of the proceedings before the Chief Magistrate's Court.

13. The 1<sup>st</sup> and 2<sup>nd</sup> respondents filed a petition for grant of representation intestate of their father's estate and listed 9 beneficiaries of the deceased's estate and only one property parcel **No. Kajiado/Kaputiei North/800**. The consent form was only signed (Thump printed) by three beneficiaries. The rest of the beneficiaries were not listed in that consent form.

14. A grant of representation was issued on 13<sup>th</sup> February, 2004. Summons for confirmation of grant dated 26<sup>th</sup> April, 2005 was filed on 27<sup>th</sup> April, 2006 and the certificate of confirmation was issued on 8<sup>th</sup> June, 2006. According to the affidavit in support of summons for confirmation, all beneficiaries had agreed that the only parcel of land go to the 3<sup>rd</sup> respondent and the certificate of confirmation was issued to that effect.

15. According to the record, on the date the grant was confirmed, Mr. Seneti counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondent/ administrators, told the court that the beneficiaries had consented to the land being transferred to the buyer and that they had signed consent to that effect. The court allowed the application as prayed. There is no indication on record, however, that the beneficiaries were present in court and informed the court that they had agreed so.

16. The summons for confirmation has consent to the conformation. It was purportedly signed before Mr. Seneti and by all beneficiaries even though the initial consent to the petition for grant was thump printed as opposed to signing.

17. The applicants have denied signing the consent and the 1<sup>st</sup> and 2<sup>nd</sup> respondents have admitted that they did not inform the applicants and all other members of their family about the petition for grant of letters of administration. They have also admitted that none of the beneficiaries signed the consent thereby admitting fraud.

18. Section 76 of the Laws of Succession Act provides grounds under which this court may revoke and annul a grant of representation. The Section provides:

***“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—***

***(a) that the proceedings to obtain the grant were defective in substance;***

***(b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;***

***(c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;***

***(d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either—***

***(i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow;***  
***or***

*(ii) to proceed diligently with the administration of the estate; or*

*(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or*

*(e) that the grant has become useless and inoperative through subsequent circumstances.”*

19. From the summons the supporting grounds and the 1<sup>st</sup> and 2<sup>nd</sup> respondents' admission, it is clear that the proceedings to obtain the grant were defective in substance by claiming that all the beneficiaries were aware and consented to petitioning for grant and therefore, the grant was obtained fraudulently by the making of a false statement as well as concealment from the court of something material to the case, that is the beneficiaries did not sign the consent.

20. Section 66 provides for the priority of parties to apply for grant of administration intestate. The section is clear that When a deceased dies intestate, the court has, save as otherwise expressly provided, a final discretion as to the person or persons to whom a grant of letters of administration should, in the best interests of all concerned, be made. Even then, and without prejudice to that discretion, the court will accept as a general guide the following order of preference; (a) surviving spouse or spouses, with or without association of other beneficiaries; (b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V; (c) the Public Trustee; and (d) creditors.

21. There is a proviso that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.

22. There is no doubt that the deceased died intestate and his only widow having also died, the estate fell for administration to his children who were in the line to succeed hi estate. They were equal in priority and the 1<sup>st</sup> and 2<sup>nd</sup> respondents did not have power to exclude the applicants.

23. It is clear from the record that the 1<sup>st</sup> and 2<sup>nd</sup> respondents violated the law, the law when they petitioned for grant of administration intestate for their father's estate to the complete exclusion of their siblings. They concealed material facts from the court that they had not consulted the rest of the beneficiaries and that they did not have their consent to petition for grant of letters of administration intestate.

24. The 1<sup>st</sup> and 2<sup>nd</sup> respondents further made a mistake when they applied for confirmation of grant without the knowledge of the other beneficiaries and failed to distribute the estate to the rightful beneficiaries. For the above reasons I am satisfied that he applicants have made out a case for revocation and annulment of the impugned grant of administration.

25. The applicants have also argued that he 1<sup>st</sup> and 2<sup>nd</sup> respondents transferred the whole land to the 3<sup>rd</sup> respondent thus disinherited the rest of the beneficiaries. The 1<sup>st</sup> and 2<sup>nd</sup> respondents have not denied this. The 2<sup>nd</sup> respondent however stated that they only sold a portion of the land and not the whole portion. The 3<sup>rd</sup> respondent did not participate to the application because it only dealt with the issue of revocation of grant. In so far as cancellation of the title was concerned he contended that the issue falls under the jurisdiction of ELC.

26. It is now the law that only the ELC can cancel a title deed under the Land Act. In that regard, the applicants will have to move the ELC for determination of the validity of the 3<sup>rd</sup> respondent's title.

27. Having considered the summons and the evidence on record, I am satisfied that the grant was obtained through fraud and concealment of material facts. Consequently. The summons for revocation of grant of administration dated 4<sup>th</sup> April, 2019 is allowed and I make the following orders;

***a) The grant of representation intestate made to the 1<sup>st</sup> and 2<sup>nd</sup> respondents on 13<sup>th</sup> February, 2004 is hereby revoked and annulled.***

***b) The certificate of confirmation issued on 8<sup>th</sup> June, 2006 is set aside.***

***c) Cause No. 16 OF 2003 before the chief magistrates' court is hereby transferred to this court for hearing and final determination.***

***d) A new grant of representation intestate to the estate of the deceased is hereby issued to ENASO ENE PASUE MALEI and ROTIKEN OLE MERIT OLTOKOKOI.***

***e) The applicants are at liberty to move the Environment and Land Court on the issue of the title issued to the 3<sup>rd</sup> respondent.***

***f) A restriction is hereby issued restricting any transactions relating to parcel Nos. Kajiado/Kaputiei North/43966 and 43967 being subdivisions of Kajiado/Kaputiei North/800 until final determination of the suit over the title issued to the 3<sup>rd</sup> respondent by the Environment and Land Court.***

***g) The 1<sup>st</sup> and 2<sup>nd</sup> respondents do pay costs of the application to the applicants.***

**Dated, signed and delivered at Kajiado this 23<sup>rd</sup> day of April, 2020.**

**E.C. MWITA**

**JUDGE**