



**REPUBLIC OF KENYA**

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

**CIVIL APPEAL NO. 2 OF 2018**

**BETWEEN**

**FREDRICK EPALAT .....APPELLANT**

**AND**

**ALBERT ASIKE OSIOYI ..... RESPONDENT**

*(Being an Appeal from the ruling in Busia Chief Magistrate's Succession Case No. 99 of 2016 by Hon. W.K. Chepseba-Chief Magistrate).*

**JUDGMENT**

1. The appellant herein, had by an application dated 27<sup>th</sup> October, 2016 applied for the revocation of grant. After the hearing of the application, the learned trial magistrate dismissed it.
2. The appellant was aggrieved by the ruling and filed this appeal. The appellant was represented by the firm of Okeyo Ochiel & Company Advocates. He raised the following grounds:
  - a) That the learned trial magistrate erred in law and in fact in dismissing of the application for revocation of grant when all the evidence was not challenged.
  - b) That the learned trial magistrate erred in law and in fact in dismissing the application without considering the replying affidavit.
  - c) That the learned magistrate erred in law and in fact in dismissing the application without considering the implication of the relevant laws and the Constitution.
3. The respondent was in person. He opposed the appeal and urged that it be dismissed.
4. This Court is the first appellate court. I am aware of my duty to evaluate the entire evidence on record bearing in mind that I had no advantage of seeing the witnesses testify and watch their demeanor. I will be guided by the pronouncements in the case of **Selle vs. Associated Motor Boat Co. Ltd. [1965] E.A. 123**, where it was held that the first appellate court has to reconsider and evaluate the evidence that was tendered before the trial court, assess it and make its own conclusions in the matter.
5. Busia Chief Magistrate Succession Cause No. 99 of 2016 was commenced after citation proceedings and the appellant herein failed to file a succession cause. This therefore paved the way for the respondent to do so.
6. The application before the learned magistrate was premised on the following grounds:
  - a) The purported beneficiaries were sufficiently provided by the deceased in his life and home.
  - b) The purported beneficiary Albert Esike Osiony is illegally (sic) and he has no legal documents to claim ownership that the same Albert has unpaid debt over the general land.
  - c) The grant was not merited to be confirmed.
7. After hearing both parties, the learned trial magistrate made a finding that there were no adequate reasons to warrant the revocation of the grant.

8. The succession cause that gave rise to the present appeal was filed by a citor. He only indicted his name and that of Esusur Sirari as beneficiaries. However, a letter dated 30<sup>th</sup> November 2015 from the office of the Senior Chief, Kakapel location, indicated the existence of six beneficiaries. These beneficiaries were not provided for. This was therefore sufficient ground for revocation of the grant.

9. The appeal is therefore allowed and consequently the confirmed grant is accordingly revoked. The appellant and the respondent are hereby appointed joint administrators of the estate. They ought to file a fresh proposal for distribution in the magistrate's court within 30 days of this ruling. Failure to comply without the court extending such a time, then the appointment will automatically be revoked.

10. Each party to bear own costs.

**DELIVERED and SIGNED at BUSIA this 30<sup>th</sup> day of September, 2020**

**KIARIE WAWERU KIARIE**

**JUDGE**