



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

PROBATE & ADMINISTRATION NO. 191 OF 2015

IN THE ESTATE OF: FRANCIS PAMBA ODULWA.....DECEASED

BETWEEN

ALFRED MAKOKHA PAMBA.....PETITIONER/ RESPONDENT

AND

PATRICK BARASA PAMBA.....OBJECTOR

RULING

1. Patrick Barasa Pamba, the objector/applicant herein moved the court by way of summons for revocation of grant dated 8th July 2019 under section 76 of the Law of Succession Act. He is seeking the following orders:

- a) That the grant of letters of administration issued to Alfred Makokha Pamba on 30th August 2016 be revoked;
- b) That a fresh grant of letters of administration be issued to Patrick Barasa Pamba; and
- c) That costs be in the cause.

2. The application is premised on the following grounds:

- a) That the grant was obtained by fraud by the petitioner misleading the court about the number of dependants that the deceased left behind;
- b) That the petitioner misled the court by not including the objector who is the son of the deceased; and
- c) That the petitioner misled the court that the whole portion of L.R NO. Bukhayo/Nasewa/24 forms part of the deceased's estate while only a portion of it forms part of the estate.

3. The application was opposed on ground that:

- a) That the objector is a stranger to the estate of the deceased; and
- b) That the objector went to the home of the deceased in the year 2001.

4. This matter proceeded by way of *viva voce* evidence as agreed by both parties.

5. Francis Pamba Odulwa, the deceased herein died on 14th October 1997. From the evidence on record, he was polygamous. However, it was not clear as to how many wives he had. According to the evidence of Chrispinus Oduori Tavakula (OB.W3) he had four wives and the mother of the objector was the fourth.

6. In the letter from the office of the chief Nasewa dated 12th April 2001 indicate that the deceased herein had three wives; namely Clara Pamba (1st wife), Sabina Pamba (2nd wife –deceased) and Roseline Auma Pamba. Tabitha was not mentioned as a wife of the deceased as testified to by Chrispinus Oduori Tavakula (OB.W3). Interestingly, the objector other than claiming to be a son of the deceased, did not mention his mother's name.

7. The objector is introduced by another letter from the chief Nasewa location dated 6th April 2016. This raises doubts as to why he was not in the original document. It therefore gives credence to the petitioner's contention, and which is supported by evidence on record, that the objector went to the home of the deceased long after his death.

8. I therefore make a finding that the objector has not discharged his onus to prove his contention. I am therefore unable to make a finding that he is a son of the deceased herein.

9. I have perused the record and I have noted that all the beneficiaries from the three widows have been catered. However, since land parcel number Bukhayo/Nasewa / 24 was held jointly by Nangoni Odulwa, Ongoro Odulwa and Francis Pamba Odulwa, it would be in the interest of justice to have the administrators of the other two brothers included so as to hold their part of estate on behalf of the other beneficiaries. For this reason, I will revoke the grant so that the administrators of Nangoni Odulwa and Ongoro Odulwa can be included in this succession cause.

10. Costs shall be in the cause.

DELIVERED and SIGNED at BUSIA this 12th day of November, 2020

KIARIE WAWERU KIARIE

JUDGE