



REPUBLIC OF KENYA

IN THE HIGH COURT

AT HOMA BAY

SUCCESSION CAUSE NO. 6 OF 2019

IN THE MATTER OF THE ESTATE OF JOHN PAUL ODERO..... (DECEASED)

AND

PETER OPIYO MC'ODERO..... PETITIONER/RESPONDENT

VERSUS

JOSEPH BEN OUNDA..... 1ST OBJECTOR/APPLICANT

YUSEVIOUR ODIWUOR ODERA.....2ND OBJECTOR/APPLICANT

CLEMENT NDIGA ODERO..... 3RD OBJECTOR/APPLICANT

MARY ADHIAMBO MUMA.....4TH OBJECTOR/APPLICANT

ALPHONCE OMONDI OUNDA.....5TH OBJECTOR/APPLICANT

RULING

[1] The application dated 16th August 2016, for revocation of grant by that five applicants/objectors against the respondent/petitioner was canvassed by way of affidavit evidence and written submissions instead of by way of viva voce evidence as directed on 17th July 2019 due to the current Covid 19(Coronavirus) pandemic.

In that regard all parties filed their necessary affidavits and written submissions. All these were given due consideration by this court which then found that the basic issue for determination was whether the respondent obtained by fraud the grant of letters of administration intestate dated 18th March 1998, and its certificate of Confirmation of Grant dated 18th November, 2013 in which that estate property comprised land Parcel No.Kisumu Fort Ternan/225, Homa Bay Municipality/3586 and Homa Bay Municipality/3598 was wholly transmitted to the respondent who petitioned for the grant in his capacity as the son of the Late John Paul Odero (deceased)

[2] The grounds in support of the application are set out in the summons for revocation or annulment of grant dated 16th August 2016 and fortified by the supporting documents of the applicants deponed on the 16th August 2016.

In essence the applicants allege that the grant was obtained by fraud and non-disclosure of material facts as the respondents failed to include them and others as beneficiaries of the estate of the deceased who was a polygamist and passed on leaving behind two wives namely; Wilfrida Achieng Odero and Ada Odero and a total of eleven children i.e five from the first wife(house) and six from the second house. The respondent belonged to the first house together with the first applicant, Joseph Ben Ounda as well as the fifth applicant, Alphonce Ounda, while the second applicant, Yuseviour Odero, third applicant, Clement Ndiga Odero and fourth applicant, Mary Adhiambo Muma belonged to the second wife(house).

[3] The applicants also allege that the respondent obtained the grant without seeking their consent and went ahead to distribute the entire estate to himself without any consideration for the other beneficiaries. That the respondent later caused the three parcels of land belonging to the deceased to be registered in his own name notwithstanding the fact that there were other beneficiaries also entitled to the property.

All these allegations were fortified by evidential facts contained in additional supporting affidavits and applicants' written submissions in objection to the respondent's objections to the application contained in his replying affidavit of 4th November, 2016 and written submissions.

[4] Basically, the conditions for revocation or annulment of grant of letters of Administration intestate are spelt out in Section 76 of the Law of Succession Act (Cap 160 Laws of Kenya). Therefore, if a grant is obtained in proceedings which were defective in substance or was obtained fraudulently by the making of false statement or by the concealment from the court of something material to the case, it would "inter-alia" be available to revocation and/or annulment.

Herein, there is no denial from the respondent in his replying affidavit and submissions that the deceased was a polygamist with two wives and that he was survived by several children including the applicants. However, the affidavit in support of the petition for the grant (i.e from P & A) dated 9th December, 1994 included some of the beneficiaries and not all. Those included were Peter Opiyo Odero (respondent), Wilfrida Achieng Odero (first wife), Mark Onyango Odero (deceased) and Yuseviour Odiwuors Odero (second applicant). The rest of the beneficiaries were also supposed to be included but were not.

Further the rectified certificate of confirmation of grant dated 18th November 2013, did not include all the beneficiaries in the distribution of the entire estate. Instead, only the respondent was included as the sole beneficiary and ended up being registered as the sole proprietor of the estate property.

[5] It is clear that the respondent failed to disclose material information while applying for the grant and while having it confirmed. His action amounted to fraud which went against the necessary principles of the Law of Succession Act.

Consequently, the application by the applicants/objections is therefore merited as the respondent did obtain the impugned grant and certificates of confirmation of grant by fraud and concealment of material facts.

The grant dated 18th March 1998 and the subsequent Certificate of Confirmation of grant dated 18th November, 2013, are hereby revoked with orders that a fresh grant do issue in the name of the respondent Peter Opiyo McOdero(Odero) as the representative of the deceased's first house and Yusaviour Odiwuor Odero as a representative of the second house and be confirmed within a period of six(6) months from this date herein.

Any benefit conferred to the respondent on the basis of the revoked grant and certificate of confirmation of grant be and is hereby declared null and void abinitio. The ownership of the three parcels of land shall forthwith revert to the name of the deceased.

These are the orders of the court.

(Delivered and signed this 12th day of November, 2020)

J.R. KARANJAH

JUDGE OF THE HIGH COURT