



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT BUSIA**

**PROBATE & ADMINISTRATION NO. 91 OF 2011**

**IN THE ESTATE OF:**

**OPAMO WANGIRA MASAKHWE.....DECEASED**

**BETWEEN**

**JACOB BABU OKUMU.....APPLICANT**

**AND**

**FREDRICK TUSKER OPAMO.....RESPONDENT**

**RULING**

1. Jacob Babu Okumu, the applicant herein filed an application dated 23<sup>rd</sup> January 2020 for revocation and annulment of the grant issued herein under section 76 (a) and (b) of the Law of Succession Act, Cap. 160, sections 3A and 63 (e) Order 40 Rules 1(a), 4 (2), 10 (1) and Order 51 Rule (1) of the Civil Procedure Rules. He is seeking six orders. Four of the six are spent and the outstanding orders are:

- a) That the court be pleased to set aside the grant confirmed on 16<sup>th</sup> January 2020; and
- b) That costs of this application be provided for.

2. The application was premised on five grounds which can be summarized as follows.

- a) That the respondent intends to grab land reserved for other family members and dispose of the same without their consent; and
- b) That the respondent has been subdividing the subject property without any colour of right.

3. The application was opposed by Fredrick Tusker Opamo, the petitioner/respondent on the following grounds:

- a) That the application is an abuse of the due process of court; and
- b) That the current application raises issues that have already been adjudicated.

4. The application is brought under section 3A and section 63(e) of the Civil Procedure Act, order 40 Rules 1(a), 4(2), 10(1) and Order 51 of the Civil Procedure Rules. Judge Ruth Nekoye Sitati while addressing these sections and Rules in a Probate and Administration cause of **Priscilla Vugutsa Kamaliki vs. Mary Runyanyi Ochieng [2016] eKLR** said the following:

**The first issue for this Court to determine is whether the instant application is properly before the Court. The application is expressed to be brought under Section 1A, 1B, 3, 3A and 63 (e) of the Civil Procedure Act Order 40 Rule 4 and Order 51 Rule 1 of the Civil Procedure Rules. It is worth noting that the Law of Succession Act is a self-contained Act and provisions of the Civil Procedure Act, unless specifically imported into it are not applicable. A look at Rule 63 of the Law of Succession Act reveals that the provisions under which the present application is brought are not some of the provisions imported into the Law of Succession Act. What this means therefore is that the instant application is incompetent for want of form and is therefore fit for striking out.**

I concur with this finding of the learned judge. In the instant application there is a saving grace in that the application is also grounded on section 76 (a) and (b) of the Law of Succession Act, Cap. 160.

5. In my ruling dated 8<sup>th</sup> May 2018 at paragraph 9, I said:

**9. In the interest of justice, I make the following orders:**

**a) That the grant issued herein be and is hereby revoked.**

**b) That the same be substituted with an order of grant to FREDRICK TUSKER OPAMO and JACOB BABU OKUMU as joint administrators.**

**c) For avoidance of doubts, JACOB BABU OKUMU is made a joint administrator so as to safe guard the interests of his father's half share in land parcel number BUNYALA/BULEMIA/149.**

**d) That the joint administrators ought to move the court for confirmation of the grant within 6 months of this ruling failure to do so, this grant will automatically stand revoked.**

6. When the petitioner respondent came before me for confirmation on 16<sup>th</sup> January 2020, he did not comply with the said orders by involving the co-administrator and ensuring that the share of applicant's father's estate was addressed. This therefore calls for the revocation of the confirmed grant.

7. Though it has been contended that the issues herein have already been adjudicated upon, this is not the true position.

8. In order to avoid proliferation of applications in future, I am directing that the applicant/co-administrator to obtain the necessary grant in respect of his father's estate so that his legal status in this matter can be regularized if he has not done so already.

9. The application is allowed with costs.

**DELIVERED and SIGNED at BUSIA this 12<sup>th</sup> day of November, 2020**

**KIARIE WAWERU KIARIE**

**JUDGE**