



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

PROBATE & ADMINISTRATION NO. 45 OF 2011

IN THE ESTATE OF MARIKO OJIAMBO ODUKI.....DECEASED

BETWEEN

STEPHEN OBANDE OBANDE.....PETITIONER

AND

JACKSON BARASA.....OBJECTOR

RULING

1. **Jackson Barasa**, the applicant/objector herein filed an application dated 13<sup>th</sup> September 2016 for revocation of the grant issued herein under section 76 of the Law of Succession Act, Cap. 160 and Rule and 73 of the Probate and Administration Rules. It is premised on the following grounds:

- a) That the petitioner filed the petition without their knowledge and filed a fake consent.
- b) That the petitioner is not related to the deceased.
- c) That the petitioner/respondent included him in the succession without consulting him.

2. The application was opposed by the petitioner/respondent.

3. I have perused the affidavits of both parties on the record. The following facts have emerged:

- a) That contrary to the contention by the objector that the petitioner moved secretly without involving other family members, the facts are that they were involved.
- b) That other family members including the brother of the objector have acknowledged the petitioner as one of the family members with a right to petition for the grant.

4. Section 76 of the Law of succession provides inter alia as follows:

*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;*

5. The objector has not proved that this section was breached.

6. Rule 73 of Probate and Administration Rules is on inherent powers of the court. It provides:

***Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.***

7. I therefore find that the application lacks merit. The petitioner is ordered to move the court within 30 days for confirmation of the grant failure to do so, the grant will be revoked without reverting to the parties.

8. The costs of this application to the petitioner.

**DELIVERED and SIGNED at BUSIA this 30<sup>th</sup> day of January, 2019**

**KIARIE WAWERU KIARIE**

**JUDGE**