



**REPUBLIC OF KENYA**

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

**PROBATE & ADMINISTRATION NO.71 OF 2004**

**IN THE ESTATE OF;**

**JACOB OPONDO AJWANGI.....DECEASED**

**BETWEEN**

**VINCENT OCHIENG OPONDO.....APPLICANT**

**AND**

**VINCENT OGAI WANDERA.....INTERESTED PARTY/RESPONDENT**

**RULING**

1. **Vincent Ochieng Opondo** the applicant herein filed an application dated 5<sup>th</sup> May 2015 under section 47 of the Law of Succession Act and Rules 43& 49 of the Probate and Administration Rules. He is seeking orders as follows:

- a) That the confirmed grant be rectified.
- b) That the property of the deceased land parcel No. SAMIA/WAKHUNGU-ODIADO/246 subdivision to Nos. 1885 &1886 be annulled and be cancelled and reverted to its original number.
- c) That a fresh certificate of confirmation be issued to the applicant to subdivided the land to the beneficiaries as follows:
  - i) Victor Ochieng Opondo -1 acre
  - ii) Michael Oduori -1acre
  - iii) Vincent Ogai Wandera - 1.5 acres
  - iv) Angelina Ouma - 2 acres

2. The application was premised on grounds that I have summarized as follows:

- a) That the subdivision was procured by fraud on the part of the interested party.
- b) That the respondent deliberately omitted some rightful heirs.

3. The application was opposed by the interested party on grounds that:

- a) The petitioner filed an application for confirmation of the grant dated 26<sup>th</sup> June 2008 and proposed that he be granted 4 acres from the estate.
- b) That the applicant lacks the capacity to urge this application.

4. I have perused the record and the facts that emerge are as follows:

i) That on 1<sup>st</sup> December 2008 a certificate of confirmation of grant was issued to Ojwang Opondo Hela to distribute the estate of JACOB OPONDO AJWANGI which comprised of SAMIA/WAKHUNGU-ODIADO/246 to Ojwang Opondo Hela (1.5 acres) and Vincent Ogai Wandera (4 acres).

ii) On 25<sup>th</sup> May 2015 another certificate of confirmation of grant in respect of the same estate was issued. This was after the application of 24<sup>th</sup> November 2014 was allowed. This application introduced the distribution of the estate to some heir left in the initial distribution. The estate was distributed as follows:

a) Angelina R. Ouna (sic) to get 2 acres;

b) Victor Ochieng to get 1 acre;

c) Evans Oduory to get 1 acre; and

d) Vincent Ogai Wandera 1.5 acres

The present application is seeking confirmation in the same terms.

5. My perusal of the record does show that the grant that was confirmed on 25<sup>th</sup> May 2015 was ever amended. I therefore have nothing to amend. The application is therefore dismissed and the petitioner given 30 days within which to render accounts as provided for under section 83 (g) of the Law of succession Act failure to do so, an order for revocation will issue.

6. The application is therefore dismissed with costs.

**DELIVERED and SIGNED at BUSIA this 22<sup>nd</sup> day of January 2019**

**KIARIE WAWERU KIARIE**

**JUDGE**