



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

(CORAM: *CHERERE-J*)

SUCCESSION APPEAL NO. 02 OF 2018

IN THE MATTER OF THE ESTATE OF AZAELKILEON WIGGWAH (DECEASED)

BETWEEN

SIPROSS JAEL ATIENO MIGULA.....APPELLANT

VERSUS

REBECA ANYANGO WIGGWAH.....RESPONDENT

(An appeal from the Order in Chief Magistrate's Court Kisumu Succession Cause no. 356 of 2016 by Hon. M.Agutu (RM) on 13th March, 2018)

JUDGMENT

Introduction

1. On 26th September, 2016 **SIPROSS JAEL ATIENO MIGULA**, (hereinafter referred to as the appellant) obtained Letters of Administration in her favour in **KISUMU SUCCESSION CAUSE NO. 356 OF 2016** in respect of deceased's **LAND PARCEL KISUMU/KASULE/1745** which was the only asset that was disclosed.
2. By an application dated 14th September, 2017, **REBECA ANYANGO WIGGWA**, the deceased's daughter (*hereinafter referred to as the respondent*) filed an application for revocation of the grant on the ground among others that the Appellant was not the deceased's daughter in law and that **LAND PARCEL KISUMU/KASULE/1745** had not been bequeathed to her by the deceased as she had claimed in her court papers.
3. The trial magistrate upon considering the application revoked the grant and granted Letters of Administration to the respondent.
4. Aggrieved by the lower court's decision, Appellant preferred this appeal and filed the Memorandum of Appeal dated 6th April, 2018 on 9th May, 2018 which set out 10 grounds of appeal which I have summarized into 2 grounds to wit:

1. The learned trial magistrate erred in not taking into account that LAND PARCEL KISUMU/KASULE/1745 was inherited from her father in law

2. The learned trial magistrate erred in law and fact in revoking the letters of administration

ANALYSIS AND DETERMINATION

5. I have carefully perused the record before me, and considered the grounds of appeal. The respondent was served but did not oppose the appeal.
6. The learned trial magistrate rightfully found that the Letters of Administration had been obtained by concealment from the court of something material to the case in this case, the deceased's full list of assets.
7. The respondent who is the deceased's daughter obviously ranks in priority to the appellant who claims to be deceased's daughter in law. The learned trial magistrate rightfully revoked the letters of administration and granted them to the respondent.

8. It is worthy to note that the learned trial magistrate gave the appellant an opportunity to prove her claim by way of *viva voce* evidence at the hearing of Succession Cause no. 356 of 2016 and did therefore not drive her from the seat of justice.

Disposition

9. For the foregoing reasons, the appeal is found to be unmeritorious and it is dismissed.

T.W.CHERERE

JUDGE

DELIVERED AND SIGNED IN KISUMU THIS 14th DAY OF *March* 2019

F.A.OCHIENG

JUDGE

Read in open court in the presence of-

Court Assistant - Felix

Appellant - Present

Respondent - Present