



**REPUBLIC OF KENYA**

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

**PROBATE & ADMINISTRATION NO. 205 OF 2009**

**IN THE MATTER OF THE ESTATE OF:**

**OJWANG AGORO.....DECEASED**

**BETWEEN**

**JOHN OLOO DUU.....PETITIONER**

**AND**

**1. CHARLES OKOTH NYABORA**

**2. ISAAC OUMA NYABORA.....OBJECTORS**

**AND**

**COUNTY GOVERNMENT OF**

**BUSIA.....INTERESTED PARTY/ APPLICANT**

**RULING**

1. The county Government of Busia, the applicant herein, moved the court by writ of chamber summons dated 2<sup>nd</sup> October 2018 under section 76 of the Law of Succession Act and Rule 63 of the Probate and Administration Rules. The applicant is seeking for the following orders:

a) That the ex parte proceedings conducted on 27<sup>th</sup> November 2014 and the ex parte order issued on 17<sup>th</sup> December 2014 be set aside unconditionally and the interested party be granted an opportunity to contest the objector's application dated 7<sup>th</sup> October 2014 on its merits.

b) That the grant of letters of administration and the certificate of confirmation of the grant both issued on 8<sup>th</sup> December 2014 to the objectors be cancelled and land parcel number **MARACHI/BUJUMBA /2414 & 2415** restored to the original registration in the name of **JOHN OLOO DUU** and **BUSIA COUNTY COUNCIL**.

2. The application was premised on the following grounds:

a) That the ex parte order issued on 17<sup>th</sup> December 2014 recognized the existence of two estates i.e. that of **Ojwang Agoro** and **Nyangweso Agoro** but the certificate of confirmation of grant distributed land parcel number **MARACHI/ BUJUMBA/141** instead of the correct parcel number **MARACHI/ BUJUMBA/41**.

b) That there is an apparent error in that the estate of Ojwang Agoro constituted half of the land parcel number **MARACHI/ BUJUMBA/41** but the confirmed grant expropriated the second half that belong to Nyangweso Agoro and which the interested party had lawfully acquired.

c) That the petitioner had expressly acknowledged the applicant's interest in half of land parcel number **MARACHI/ BUJUMBA/41**.

3. The petitioner, John Oloo Duu opposed the application on the following grounds:

a) That he was not a son of Ojwang Agoro.

b) That he never sold any part of land parcel number **MARACHI/ BUJUMBA/41** to the applicant/ interested party.

4. The objectors herein opposed the application on the following grounds:

a) That land parcel number **MARACHI/ BUJUMBA/41** was distributed by a grant dated 30<sup>th</sup> March 2003 to John Oloo Duu and the County Council of Busia.

b) That the application for revocation was heard and allowed on 7<sup>th</sup> October 2014.

c) That no sale agreement has been exhibited.

5. Contrary to the contention of the applicant that the application for revocation dated 7<sup>th</sup> October 2014 was not served, I have seen a return of service and attached to it a copy that was duly signed and stamped at office of the County Secretary on 12<sup>th</sup> November 2014.

6. After the revocation of the earlier grant, the applicant was expected to demonstrate to the court that he was entitled to half of land parcel number **MARACHI/ BUJUMBA/41**. A chance was given but was not seized. Instead, the applicant resorted to falsehood that summons was not served. This has been proved to be a deliberate falsehood.

7. The applicant had a chance to redeem the case by attaching documents of entitlement such as sale agreement, Land Board's consent or any other document that may indicate that the deceased had commenced transfer of part of his land to the applicant but for his death. There is no basis therefore on which I can allow the application. The same is dismissed with costs.

8. I have noted that the administrators have never rendered account as required under section 83 (g) of the Law of Succession Act. The section provides:

**Personal representatives shall have the following duties—**

**g) within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration;**

I am giving to the administrators 30 days from the date of this ruling to do so and in default the grant will be automatically be revoked.

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

**KIARIE WAWERU KIARIE**

**JUDGE**