



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

PROBATE & ADMINISTRATION NO. 272 OF 2011

IN THE MATTER OF THE ESTATE OF:

ZAKARIA EMODO ENYADO.....DECEASED

BETWEEN

NAWIRE IKATUKURU OSUGWAR.....PETITIONER

AND

GABRIEL ADOLF EBU EMOTO.....APPLICANT

RULING

1. Gabriel Adolf Ebu Emoto, the applicant herein, moved the court by way of Notice of Motion for the following orders:
 - a) The matter be certified urgent and be heard on a priority basis. (Spent).
 - b) There be a stay of execution of the orders of dated 9th December 2013 and issued by the Deputy Registrar on 13th April 2016.
 - c) That a prohibitory order be issued restraining any dealing whatsoever on land parcel number **S/TESO/ ANGOROMO/2255**.
 - d) The orders of 19th February 2013 extracted and issued on 9th December 2013 be set aside.
 - e) Costs of the application be in the cause.
2. The application was premised on the following grounds:
 - a) That the succession cause had long been concluded in 2003.
 - b) That the applicant and Meshack Muchere had obtained title deeds on 17th November 2003.
 - c) That Meshack Muchere died on 20th September 2012.
 - d) That the consent to vary the sharing dated 19th February 2013 was obtained by fraud on the part of Balongo & Company Advocates and Florence Auma Onyango.
 - e) That the applicant and the estate of Meshack Muchere were not part of the consent.
 - f) That the court was misled to issue orders on the purported consent.
3. The petitioner opposed the application on the following grounds:
 - a) That the application is fatally defective.
 - b) That the applicant's title number **SOUTH TESO/ANGOROMO/7653** was rightly cancelled after the grant was revoked for not

including all the beneficiaries.

- c) That the dispute is a land and not a succession issue.
- d) That this court lacks jurisdiction to grant the orders sought.
- e) The orders were executed and the land changed status long time ago.
- f) The orders sought are vague, opaque and not geared towards determination.
- g) That the orders are final in nature if issued.

4. One fact that is lost to the applicant is that a grant can be revoked at any time as long as the provisions of section 76 of the Law of Succession Act is satisfied. The section provides:

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;

(d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either—

(i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or

(ii) to proceed diligently with the administration of the estate; or

(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or

(e) that the grant has become useless and inoperative through subsequent circumstances.

5. There was a consent that was filed on 19th February 2013 by the firm of Balongo and company Advocates who were representing the interests of Florence Auma Ongoma, who by that consent was made a co-petitioner with Nawire Ikatukuru Osugwar. It was by this consent letter that the previous grant was revoked.

6. Upon my perusal of the previous grant, I note that the it had only three beneficiaries namely; Nawire Ikatukuru Osugwar, Meshack Muchere Omumasaba and Gabriel Adolf Emoto Ebu. The contested grant has three other beneficiaries that were left out in the initial grant that was revoked. The applicant is therefore not being truthful to allege that the court was misled to revoke the said grant. The failure to provide for some beneficiaries is a good reason for revocation of a grant whether confirmed or not.

7. I therefore find that the application lacks merit and the same is dismissed with costs. The co-petitioners are given 30 days from the date hereof to take a date for rendering accounts. Failure to do so, the grant will automatically be revoked.

DELIVERED and SIGNED at BUSIA this 30th day of April, 2019

KIARIE WAWERU KIARIE

JUDGE