



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

(CORAM: CHERERE-J)

SUCCESSION CAUSE NO. 213 OF 2013

IN THE MATTER OF THE ESTATE OF MAGDALENE OLUOCH OORO (DECEASED)

BETWEEN

JOHN OKELLO OORO.....PETITIONER/RESPONDENT

AND

GEORGE OSORO OORO.....OBJECTOR/APPLICANT

JUDGMENT

Introduction

1. **MAGDALENE OLUOCH OORO (hereinafter referred to as deceased)** died sometimes on 20th February, 2007. Deceased's estate comprises of **Land Parcel No. KISUMU/KONYA/2850** which deceased jointly owned with **JOHN OKELLO OORO, (hereinafter referred to as Petitioner/Respondent)**
2. Letters of administration were issued to the Petitioner/Respondent on 25th June, 2013 in his capacity as son of the deceased.
3. The grant was subsequently confirmed in favour of the Petitioner/Respondent and a certificate of confirmation of grant was issued on 26th March, 2014 in his favour.

Application

4. By an application dated 11th March, 2015 filed on 12th March, 2015 brought under Sections 47 and 76 of the Law of Succession Act (*the Act*) and Rule 44 and 73 of the Probate & Administration Rules (*the Rules*), **GEORGE OSORO OORO (hereinafter referred to as the Objector/Applicant)** seeks revocation of the certificate of confirmation of grant in his capacity as son of the deceased on the ground that Petitioner did not make provision for him and his two siblings **SERFINE OYOO OORO** and **VERLARIA AKINYI OORO**.

Objector/Applicant's Case

5. In support of his case, the Objector/Applicant referred to the chief's letter dated 13th March, 2013 which was filed by the Petitioner/Respondent which lists the children of the deceased as **JOHN OKELLO OORO, SERFINE OYOO OORO, GEORGE OSORO OORO** and **VERLARIA AKINYI OORO**. The Objector/Applicant's faulted the Petitioner/Respondent for disinheriting him and their two sisters.
6. **VERLARIA AKINYI OORO** and **SERFINE OYOO OORO** supported the Objector/Applicant's prayer for revocation of the Certificate of Confirmation of grant on the ground that the Petitioner/Respondent had disinherited the Objector/Applicant. Both stated that they had relinquished their claim over their mother's estate in favour of their brothers.

Analysis and Determination

7. The Petitioner/Respondent did not oppose the application and neither did he nor his counsel attend court on the hearing dates.
8. The issue in question is whether the Objector/Applicant has made out a case for revocation of the Certificate of Confirmation of Grant

issued on 26th March, 2014 in favour of the Petitioner.

9. Section 76 of the Act provides 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;

(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 has ordered or allowed; 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.”

10. In Musa Nyaribari Gekone & 2 Others v Peter Miyienda & another [2015] eKLR, the court of Appeal held that:

“The expression “any interested party” as used in the foregoing provision, in its plain and ordinary meaning, is in my view wide enough to accommodate any person with a right or expectancy in the estate.”

11. From the evidence contained in the chief’s letter dated 13th March, 2013 which was filed by the Petitioner/Respondent, the deceased’s children **JOHN OKELLO OORO, SERFINE OYOO OORO, GEORGE OSORO OORO** and **VERLARIA AKINYI OORO**. In my considered view, the Objector/Applicant has a legitimate interest over deceased’s estate and hence he is entitled to apply for revocation of the grant.

12. I am convinced by the evidence on record that the Certificate of Confirmation of Grant issued on 26th March, 2014 in favour of the Petitioner/Respondent was obtained fraudulently and by non-disclosure of all the beneficiaries to the estate.

Disposition

13. As a result, the objection is found to have merit and it is allowed in the following terms:

1) The Letters of administration were issued to JOHN OKELLO OORO on 25th June, 2013 and Certificate of Confirmation of Grant issued on 26th March, 2014 in his favour be and are hereby revoked

2) GEORGE OSORO OORO is hereby appointed as a co-administrator of the Estate of the deceased MAGDALENE OLUOCH OORO (DECEASED) jointly with JOHN OKELLO OORO.

3) The Deputy Registrar of this court is directed to ensure issuance of Letters of Administration in their joint names forthwith

4) The joint administrators are directed to within 30 days after issuance of the Letters of Administration proceed to apply for confirmation of the grant in accordance with the provisions of the law after ascertaining and determining all persons and their respective beneficial entitlement to the estate

a) Costs shall be in the cause.

DELIVERED AND SIGNED AT KISUMU THIS 30th DAY OF May 2019

T. W. CHERERE

JUDGE

READ IN OPEN COURT IN THE PRESENCE OF-

Court Assistant - Felix

Petitioner/Respondent - N/A

For Petitioner/Respondent - N/A

Objector/Applicant - Present

For Objector/Applicant - Mr Nyamweya/Rabura