



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT HOMA BAY**

**SUCCESSION CAUSE NO.332 OF 2015**

**FORMERLY OYUGIS SUCC. CAUSE NO.87 OF 2006**

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

**ONUKO NGETE.....DECEASED**

**AND**

**SAMUEL OYIEKE NGETE.....OBJECTOR/APPLICANT**

**VERSUS**

**LEONORA AKUMU OGILA.....PETITIONER/RESPONDENT**

**RULING**

[1] This succession cause emanated from the magistrate's court at Oyugis where it was initially registered on 24<sup>th</sup> July 2006 as **Succession Cause No.87 of 2006** for purposes of obtaining grant of letters of administration intestate respecting the estate of **Onuko Ngete** (deceased) who died at the age of thirty four (34) on the 20<sup>th</sup> January 1970 as per the death certificate dated the 27<sup>th</sup> October 2005.

The necessary petition was presented by the son of the deceased, Simon

Olwa Ogila, who was among the persons surviving the deceased. The others were Tom Odiwuor Ogila, Moses Otieno Ogila, Mobil Ngolo Ogila, Samuel Oyieke Ogila, Erasto Ogila and James Ochieng Ogila. They were all considered as the beneficiaries of the estate of the deceased comprising of a portion of land described as **No. Kasipul/Kachieng/225**.

[2] On 24<sup>th</sup> May 2007, the necessary letters of administration intestate were granted to the applicant/petitioner, Simon Olwa Ogila, who thereafter never took out necessary summons for confirmation of grant thereby causing the dismissal of the succession cause for want of prosecution on 11<sup>th</sup> September 2008. Nonetheless, he applied for lifting of the dismissal order and this was granted by the court on 10<sup>th</sup> December 2009. The cause was therefore reinstated and on 14<sup>th</sup> April 2010, one of the beneficiaries i.e. Erasto Ogila Olwa, took out summons for confirmation of the grant.

[3] The grant was eventually confirmed on the 27<sup>th</sup> May 2010, after the applicant Simon Ogila Olwa, testified in court and said that the deceased was his uncle but had no children and his wife also died.

Accordingly, the identified beneficiaries had agreed on the distribution of his estate. The court therefore confirmed the grant in terms of the agreed mode of distribution.

A certificate of confirmation of grant was accordingly issued on the same **27<sup>th</sup> May 2010**.

The matter was seemingly concluded at that stage. What remained was for the applicant/petitioner to effect the distribution of the estate property to all the identified beneficiaries in accordance with the agreed mode or schedule of distribution.

[4] However, in a move that re-opened the case, an application dated 16<sup>th</sup> September 2011, was made by **Leonora Akumu Ogila** for substitution of the petitioner, Simon Olwa Ogila, with herself on grounds that the petitioner who was her husband had since passed away prior to the conclusion of the succession process.

The application was allowed by the court at Oyugis on 22<sup>nd</sup> September 2011 and on the following day (23<sup>rd</sup> September 2011) in a strange

twist of events, the new applicant/petitioner Leonora Akumu Ogila, obtained a second grant of letters of administration from the same court and further proceeded to obtain a second certificate of confirmation of grant on the same 23<sup>rd</sup> September 2011.

[5] At this point, it is instructive to note that the original grant of letters of administration dated 25<sup>th</sup> May 2007 and the original certificate of confirmation of grant dated 27<sup>th</sup> May 2010, had not been revoked when the later grant of letters of administration and the certificate of confirmation of grant both dated 23<sup>rd</sup> September 2011 were issued.

In effect, this meant that the original grant and certificate of confirmation of grant both made in favour of the original deceased petitioner/applicant, Simon Olwa Ogila, remained valid and are still valid to date thereby rendering the grant and certificate of confirmation of grant both dated 23<sup>rd</sup> September 2011 and issued to Leonora Akumu Ogila, null and void “**ab-initio**”. The two documents must now and are hereby revoked by this court under **Section 76** of the **Law of Succession Act** so as to leave no doubt as to their invalidity for purposes of the distribution of the estate of the deceased, **Onuko Ngete**, being land parcel No. Kasipul/Kachieng/225.

[6] This therefore means that any distribution or purported distribution of the estate to the identified beneficiaries by Leonora Akumu Ogila, as the substituted petitioner on account of the invalidated grant and certificate of confirmation of grant issued to herself was devoid of any legal strength and/or authority to be acted upon for purposes of a successful completion of the administration of the estate.

It was that invalidated process which gave rise to the present application dated 10<sup>th</sup> July 2015 and indeed, this succession cause No.332 of 2015.

[7] In so far as the application is made on the basis of the invalidated or revoked grant of letters of administration and certificate of confirmation of grant both issued to the respondent, Leonora Akumu Ogila, in Oyugis Succession cause No.87 of 2006, it is misconceived as “**nothing comes from nothing**”. A grant or certificate of confirmation of grant which is invalidated contains nothing but a legal void. It is

valueless and nothing is expected to come from it.

For this reason, the present application by the applicant/objector Samuel Oyieke Ngete, must also and is hereby struck out and dismissed for being null and void “**ab-initio**”.

[8] In conclusion it is worth mentioning that the Law of Succession Act does not talk of substitution of an administrator but for making of a grant to another person or persons after revocation of grant or on the death of an administrator. This means that the application by the respondent at the court in Oyugis for substitution of the administrator was fatally defective and ought not to have been allowed. In any event, it was made by way of a chamber summons which was devoid of any enabling provision of the law.

Besides, the initial grant issued to the deceased administrator became useless and in operative following his demise. In the circumstances, the only alternative was for it to be revoked pursuant to **Section 76** of the **Law of Succession** as has been done herein by this court and for a fresh grant to be made on proper application by any person falling within the categories set out in **Section 66** and **Part V** of the **Law of Succession Act**.

[9] However, where there are more than one administrators, **section 81** of the **Act** does provide for the powers and duties of personal representatives to vest in the survivor/s on the death of one of them.

In **Nairobi High Court Succession Case No.2018 of 2001 – In the Matter of the Estate of Mwangi Mugwe alias Eliza Ngware (deceased)**, it was held that an application for substitution was improper and could only be brought under **Section 76** of the **Law of Succession Act** on the grounds that the grant had become useless and inoperative following the demise of the holder.

(See also, In **the Estate of George Ragiri Karanja (deceased) 2016 e KLR** and **Julia Mutume M’mboroki –vs- John Mugambi M’mboroki & 3 others (2016) e KLR**).

[10] In sum, the initial grant made to the deceased administrator Simon Olwa Ogila, ought to be revoked on application by any of the genuine beneficiaries for being useless and in operative following his demise and a fresh grant be issued to any of the genuine beneficiaries of the estate of the late **Onuko Ngete**, being land parcel No. Kasipul/Kachieng/225.

**J.R. KARANJAH**

**JUDGE**

**25.09.2019**

[Dated and delivered this 25<sup>th</sup> day of **September, 2019**]