



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

PROBATE & ADMINISTRATION NO. 386B OF 2013

IN THE MATTER OF THE ESTATE OF: ONGANGI OYIRIA.....DECEASED

BETWEEN

MOSES TAIFA ONGANGI.....PETITIONER/ RESPONDENT

AND

GRACE OKWARA OLANDO.....OBJECTOR/ APPLICANT

RULING

1. The objector/applicant filed summons for revocation of grant under section 76 of the Law of Succession Act and Rule 44(1) of Probate and Administration Rules. she is seeking the following orders:

- a) That the grant made to the petitioner on 24th June 2014 be revoked;
- b) That she be included as a beneficiary; and
- c) That costs be in the cause.

2. The application is premised on the following grounds:

- a) That she was omitted in the list of beneficiaries;
- b) That she had purchased a portion of land from the deceased herein in the year 1978.

3. Grace Okwara Olando, the objector/applicant attached a copy of what she calls a sale agreement. This is the document she is relying on to stake her claim in the estate of the deceased. Before I comment on the document I wish to reproduce herein below:

23/4/1978

MAPATANO YA KUNUNUA SHAMBA KWA MAMA GRACE OKWARA NA BWANA ONGANGI OYIRIA WA NO. YA SHAMBA 1247 KISOKO BUKHAYO MARKET KIASI YA SHAMBA EKA MOJA NA NUSU KWA SH. ELFU TATU NA MIA MOJA (3,100/=) AMBAYO NIMILIPA YOTE KASHI HAKUNA DENI IMEBAKI. MASHAIDI(sic) WA MAMA GRACE OKWARO NI BWANA PETER OTARO NA BWANA ROBERT OCHIENGI NA MASHAIDI (sic) WA BWANA ONGANGI OYIRIA NI BWANA OKWARA OYIRIA NA BWANA DINDI OYIRIA WOTE WA KISOKO SUB-LOCATION, KWA HIVYO NINANGOJA BWANA OGANGI ANIPE NO. YA SEHEMU YANGU YA SHAMBA.

4. The first issue to note is that the parties to the purported sale agreement and their alleged witnesses did not sign the document. The document appears to be a narration by the objector herein of what transpired and cannot qualify to be a sale agreement.

5. Even if this document had been correctly drafted and the parties thereto signed, the sale of agricultural land requires that the consent of the Land control Board be obtained within six months of the agreement. Failure of which the agreement cannot be effected. If the agreement was entered into on 23rd April 1978, then the consent ought to have been obtained by 22nd October 1978. The death of Ongangi Oyiria had no effect on the same; he died much later.

6. I have noted that there is a conflict on the date of death between the documents filed by the petitioner and the objector. The original death

certificate indicate that the deceased died on 3rd may 1983 while the copy of death certificate which is not certified filed by the objector gives the date of death as 20th August 1979. Whenever there is a conflict between a copy and the original document, the same is resolved by upholding the original as the correct document unless the contrary is proved. The objector has not proved that the original death certificate is not authentic. Even if we assume that the deceased died on the date purported by the copy filed by the objector, still this would not have worked in her favour. The deceased would have died almost ten months of the purported sale agreement.

7. I therefore find that the objection by the objector/applicant has no merits. The same is dismissed with costs.

DELIVERED and SIGNED at BUSIA this 24th day of September, 2019

KIARIE WAWERU KIARIE

JUDGE