

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

SUCCESSION CAUSE NO. 372 OF 2013

IN THE MATTER OF THE ESTATE OF KILEOPA OLOO ONYANGO (DECEASED)

JUDGMENT

1. Certificate of death serial number 100391, dated 11th May 1982, indicates that the deceased to whose estate this cause relates, was known as Kileopa Oloo Onyango, who died on 18th July 1975. There is a letter on record from the Chief of Marama South Location, dated 30th September 2010. It indicates that he died possessed of a property described as Marama/Shibembe/769. It indicates the heirs of the deceased to be his three sons, named as Calleb Omocho, William Obiero Oloo and Peter Omocho Ojwang.
2. Representation to his estate was sought by the Calleb Omocho Oloo, in his capacity as son of the deceased, through a petition for letters of administration intestate that he lodged in Butere PMSC No. 93 of 2010 on an unknown date, as the petition and the other documents that accompany it were not embossed with the official court stamp of the Butere Principal Magistrate's Court, but the affidavit in support had been commissioned on 4th October 2010. In the petition, he listed himself and his two brothers, named in the Chief's letter, as the persons who had survived the deceased, but added the name of Rebecca Shikanda, who he described as a widow of the deceased. He stated the deceased to have had died possessed of the property listed in the Chief's letter referred to above. A grant of letters of administration intestate was purportedly made to the said Calleb Omocho Oloo, who I shall hereby refer to as the purported administrator, on an unknown date, which grant was not signed by ES Olwande, the Senior Resident Magistrate who had purportedly made it.
3. The purported administrator then lodged a summons for confirmation of his purported grant on 18th March 2013, of even date. An objection was raised to the summons, dated 25th January 2013, by William Obiero Oloo, one of the surviving sons of the deceased. I note that the law prescribes filing of affidavits of protest to summons for confirmation of grants, and not the filing of objections, and I shall presume that the objection filed herein was intended for an affidavit of protest. I shall hereafter refer to the person who filed that objection as the presumed protestor. There is also a replying affidavit sworn on 15th July 2013 by the purported administrator. Am not quite sure what the purported administrator was replying to, given that there is no other application pending in this cause, save for his summons for confirmation of his purported grant, dated 18th March 2013. He cannot possibly be relying to his own application. It cannot also be possible that the same is a reply to the misguided objection dated 25th January 2013, for an affidavit should only be sworn to respond to another affidavit.
4. The matter was subsequently transferred to the High Court at Kakamega, following an order of the Butere court, made on 13th May 2013, ostensibly on grounds of lack of pecuniary jurisdiction, and the same became Kakamega HCSC No. 372 of 2013.
5. Directions were given on 24th February 2014, for disposal of the said summons by way of oral evidence. Witness statements were filed, and the two rival parties testified. At the conclusion of the hearing it was directed that the parties file written submissions. There was compliance with those directions by the purported administrator, but not by the presumed protestor. Thereafter, the matter was fixed for judgment.
6. It was in the course of working on the judgment that I established that the grant of representation on record was not signed by the officer who was purported to have had made it. It is the signature of the designated officer that authenticates the document. Without that signature the said document is an ineffective piece of paper, and any proceedings conducted on the basis of the useless piece of paper would be a nullity. As there is no grant on record, there can be no basis for the application for confirmation of grant. The orders sought in that application are not available. The parties have now to go back to the basis, by securing a grant that is properly executed by the designated officer after which they can apply for its confirmation.
7. By reason of the foregoing, I have no valid summons for confirmation of grant before me, upon which I can make the orders sought. The application dated 18th March 2013 is, therefore, incompetent and filed in abuse of court process, and is accordingly hereby struck out, with no orders as to costs.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 25TH DAY OF OCTOBER 2019

W. MUSYOKA

JUDGE