



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT HOMA BAY

SUCCESSION CAUSE NO.14 OF 2017

FORMERLY RONGO SUCC. CAUSE NO.82 OF 2003

IN THE MATTER OF THE ESTATE OF:

AMALA ARINGO & SIPRIANUS OCHIENG.....DECEASED

AND

LUSI AMALA.....OBJECTOR/APPLICANT

VERSUS

SOPHIA ALUDO AYOKO.....RESPONDENT/PETITIONER

RULING

[1] This application for revocation of grant dated 26th May 2017 is made by **Lusi Amala** (applicant/objector) against **Sophia Aludo Ayoko** (petitioner/respondent) seeking orders that the grant of letters of administration intestate issued to the petitioner on **5th August 2003** be revoked and that a fresh grant be issued to the applicant.

The grounds for the application are that the grant was obtained by concealment of material facts with regard to the true heirs of the deceased such that all beneficiaries were not listed including the applicant who is son to the deceased, Amala Aringo. That, the grant was obtained by means of false allegations of facts which were relied upon by the court to award and confirm it and that the respondent has failed to administer the estate for the benefit of the heir and has instead alienated all the assets of the deceased and converted the proceeds for his own use and benefit without regard to the other heirs.

It is the applicant's contention that the beneficiaries stand to lose their inheritance rights and shall suffer prejudice unless the orders sought are granted.

[2] In the supporting affidavit dated 26th May 2017, necessary documents are annexed in support of the averments contained therein. A further supporting affidavit dated 8th November 2019 was filed on the same date.

In her defence to the application, the petitioner/respondent contends that the deceased Amala Aringo, was her father-in-law being the father of her late husband, the eldest son of the deceased.

That, she followed the correct procedure in filing this succession cause and obtained title deeds pertaining to parcels of land known as **Kabuoch/Kobita/Kawuor 1142, 1135, 2525, 1074 and 1089** which her late husband was entitled to.

The respondent urged this court to dismiss the application which was to be argued by way of "viva voce" evidence as directed by the court on the 28th March 2019. However, the direction was on 16th October 2019, substituted for hearing by affidavit evidence and written submissions after it became apparent that both the applicant and respondent were having difficulties in attending court due to indisposition.

[3] Accordingly, the applicant/objector, filed his written submissions dated 8th November 2019 together with his further supporting affidavit, also dated 8th November 2019.

The respondent did not strictly file her submissions but apparently intended that her defence filed herein and dated 24th June 2019 be treated as her response and submissions in opposition to the application.

Be that as it may, **Section 76** of the **Law of Succession Act**, provides for revocation or annulment of grant if it was obtained by making of false statement and concealment of material facts on the part of the petitioner.

A grant may also be revoked if the holder thereof fails to proceed diligently with the administration of the estate.

Herein, the main allegation against the petitioner/respondent is that she made false statement and concealed material facts in failing to disclose and list all the true beneficiaries of the estate. It is also alleged that she has failed to proceed diligently with the administration of the estate by alienating the assets of the deceased and converting them to her own use without due regard to the other beneficiaries.

[4] Another pertinent allegation against the respondent is that she obtained the impugned grant in proceedings that were defective in substance in that the grant was in respect of the estates of her father-in-law, the late Amala Aringo or Oringo and her son, the late Siprianus Ochieng, yet the two did not co-own any property or the estate property.

All these allegations were not substantially disputed by the respondent.

A perusal of the record by this court more or less confirmed the allegations made against the respondent by the applicant. It shows that the respondent and her son Amala Ayoko were the only beneficiaries of the deceased's estate comprising of four parcels of land known as No.Kabuoch/Kobita/Kawuor/1089, 1135, 1145 and 1147.

The certificate of confirmation of grant dated 5th August 2003 shows that the grant of letters of administration was issued and confirmed on the same date. It also shows that the respondent was the only beneficiary in the distribution of the estate. No other beneficiary was listed in the certificate.

Quite intriguing is the fact that the respondent petitioned for grant of letters of administration intestate respecting the estates of the deceased persons who died approximately nineteen (19) years apart.

[5] The applicant's supporting affidavits clearly showed and established that the applicant was a true beneficiary of the estate of the late Amala Aringo but was excluded altogether as such in both the petition for grant and summons for confirmation of grant taken out by the respondent. The affidavits established without dispute that the deceased Amala Aringo, was a polygamist with two wives at the time of his death. His first wife, **Maria Amala**, had no child while his second wife, **Opanga Ondeng Amala**, had two children i.e. the applicant, **Lusi Amala** and his late brother, **Mena Amala**, (deceased).

It was also undisputedly established that the respondent is a step sister-in-law of the applicant as she was the wife of one **Rashid Ayoko Nyakwaka**, a son of one **Nyakwaka** who was a blood brother of the deceased Amala Aringo, father of the applicant.

It was further established that the deceased died intestate and was survived by the applicant as the sole heir and beneficiary of his estate together with the surviving wife of his late brother by name **Grace Anyango Mena**.

Also established, was the fact that the assets belonging to the deceased, Amala Aringo, comprised of five and not four parcels of land i.e. **Nos. Kabuoch/Kobita/Kowuor/1089, 1135, 1145, 1147 and 1142**, all of which were available for distribution to the rightful beneficiaries. However, parcel **No.1142** was omitted by the respondent in her petition for the grant and in her summons for confirmation of grant.

[6] From all the foregoing, it is evident that the petitioner/respondent obtained the impugned grant and the certificate of confirmation of grant in proceedings which were defective in substance and by misrepresentation of facts as well as concealment of material facts.

The present application must therefore be and is hereby allowed with orders that both the impugned grant and certificate of confirmation of grant issued to the petitioner/respondent are hereby revoked and a fresh grant shall issue forthwith in the name of the applicant, **Lusi Amala**, and the surviving widow of his late brother, **Grace Anyango Mena**. The two shall identify all other deserving beneficiaries and take out the necessary summons for confirmation of grant incorporating all the rightful and deserving beneficiaries of the estate of the late Amala Aringo within the next six (6) months from this date hereof or any other shorter period that they may deem necessary.

For avoidance of doubt the fresh grant shall be in respect of the estate of the late Amala Aringo. Ordered accordingly with each party bearing their own costs of the application.

J.R. KARANJAH

JUDGE

28.11.2019

[Delivered and dated this 28th day of November, 2019]