



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT HOMA BAY

SUCCESSION CAUSE NO.12 OF 2018

FORMERLY OYUGIS CM'S COURT SUCC. CAUSE NO.175 OF 2013

IN THE MATTER OF THE ESTATE OF: OSEWE NG'IELA NG'ELA.....DECEASED

AND

YUNIS APIYO OSEWE.....1ST OBJECTOR/APPLICANT

CHARLES OORO OSEWE.....2ND OBJECTOR/APPLICANT

VERSUS

MAURICE ODIWUOR DEYA.....PETITIONER/RESPONDENT

RULING

[1] Basically, the application vide summons for revocation and/or annulment of grant of letters of administration intestate issued to the petitioner/respondent, **Maurice Odiwuor Deya**, by the magistrate's court at Oyugis on the **13th October 2013**, is grounded on the main allegation by the applicants/objectors, **Yunis Apiyo Osewe** and **Charles Ooro Osewe**, that the grant was obtained fraudulently by means of

making false statements and concealing material facts. Other allegations in the summons are more or less peripheral but include a serious allegation that the petitioner was not seized of the requisite "locus-standi" to institute the impugned succession proceedings.

All the allegations are fortified by the objector's averments in the supporting affidavit dated 3rd July 2018.

There was no response from the respondent in the form of a replying affidavit and/or grounds of opposition.

Therefore, the application was uncontroverted thereby implying that the allegations made by the objectors against the respondent are essentially true allegations of fact upon which the court may exercise discretion in favour of the objectors.

[2] Under **Section 76 (a) (b) and (c)** of the **Law of Succession Act**, a grant of representation may be revoked by the court at any time if it is satisfied that it was obtained in proceedings which were defective in substance or was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case or 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.

The undisputed allegations made by the objectors against the respondent clearly discharges and satisfies the aforementioned conditions for revocation or annulment of grant of representation.

[3] In the circumstances, the impugned grant issued to the petitioner/

respondent on 13th October 2013, respecting the estate of the late **Osewe Ngiela Ngiela** (deceased), be and is hereby revoked and anything done on its strength was "null and void" "ab-initio" and remains so to date such that the name of the deceased subsists as the proprietor of his estate comprising of the parcels of land specifically and clearly identified in paragraph 15 of the objectors' supporting affidavit dated 3rd July 2018.

A fresh grant shall forthwith issue to the two applicants/objectors and may be confirmed within the next six (6) months from this date hereof

or any shorter period that the parties may deem fit subject to them agreeing on the mode of distribution of the estate to all the proper and lawful beneficiaries of the estate among the three houses of the deceased.

Ordered accordingly.

J.R. KARANJAH

JUDGE

27.11.2019

[Delivered and dated this 27th day of November, 2019]