



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

(CORAM: CHERERE-J)

SUCCESSION CAUSE NO. 212 OF 1997

IN THE MATTER OF THE ESTATE OF JOHN ABOK OGOLA (DECEASED)

BETWEEN

JAMES JUMA ABOK.....1ST OBJECTOR/APPLICANT

CHRISTINE RACHEL ALUOCH AYIEYE.....2ND OBJECTOR/APPLICANT

AND

GRACE ONDU OGOLA.....RESPONDENT

JUDGMENT

Introduction

1. **JOHN ABOK OGOLA (deceased)** died sometimes on 18th March, 1969. His estate comprised of **L.R. NO. WEST KISUMU/KARATENG/485 (suit property)**.
2. Prior to the issuance of the Letters of Administration, **James Juma Abok (1st Objector) John Ayieke and Christine Aturo Dwasi** had by summons dated 15th September, 1997 filed an objection. By an order dated 15th October, 1997, the court ruled that the objection was premature and struck it out,
3. Subsequently, Letters of administration were issued to **JOSEPH ABOK OGOLA** on 22nd October, 1997. The grant was successively confirmed in favour of the **JOSEPH ABOK OGOLA** and a Certificate of Confirmation of Grant was issued on 18th July, 2000.
4. **JOSEPH ABOK OGOLA** subsequently died and a **VIDE Succession Cause No. 166/04**, the suit property was transferred to the **GRACE ONDU OGOLA (Respondent)**.

Application

5. By summons dated 08th October, 2018 and filed on 09th October, 2018, the Applicants pray for revocation of the Letters of Administration issued to the **JOSEPH ABOK OGOLA** and in the alternative the revocation of the Grant issued to **JOSEPH ABOK OGOLA** on the ground that it was obtained fraudulently and by concealment of material particulars to the court. The application is supported by an affidavit sworn by the Applicants on 08th October, 2018 and filed on 09th October, 2018.

Objector's' Case

6. When the Objection came up for hearing on 03rd December, 2018, the Respondent had not been served allegedly because she had relocated to the USA. I directed that the Respondent be served by registered post to her last or by advertisement in a newspaper with national wide coverage and fixed the matter for hearing on 23.03.19. The matter was subsequently fixed for hearing on 30.09.19 and I proceeded to take the Objectors' evidence after I was satisfied that the Respondent had been served by advertisement.

7. The 1st Objector told court that the deceased was his father and had 3 wives as follows:

1st house

Lorna Nduna – widow

Children

Joseph Abok Ogola (deceased husband to the Respondent)

2nd house

Dorca Nduna – widow

Children

- i. Margaret Adera Abok - Deceased
- ii. James Juma Abok - (1st Objector)
- iii. Phelgona Atieno - Deceased
- iv. Risper Auma
- v. John Ayieye Abok (deceased husband to the 2nd Objector)

3rd house

Agnetta Agingo – widow

Children

- i. Wilson Ogolla Abok - Deceased
- ii. Richard Dwasi Abok - Deceased
- iii. James Abok - Deceased
- iv. Margaret Apiyo Abok
- v. Elizabeth Akinyi Abok

8. The 1st Objector stated that he was representing his siblings from the 2nd and 3rd house. He faulted Joseph Abok Ogola (***deceased husband to the Respondent***) the administrator in this case for allocating the deceased's estate solely to himself thereby disinheriting all the children of the deceased from the 2nd and 3rd house who were to share the suit property equally. He stated that Joseph Abok Ogola (***deceased husband to the Respondent***) the administrator in this case had already benefitted from **L.R. NO. WEST KISUMU/KARATENG/1291** and in support therefore annexed the green card for that parcel of land which has now been transferred to his wife the Respondent herein.

9. The Respondent did not file any response to the objection and neither did she appear nor send a representative during the hearing.

Analysis and Determination

10. I have considered the objection vis-à-vis the evidence on record. Section 76 of ***the Act*** provides as follows:

“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion-

(a) that the proceedings to obtain the grant were defective in substance;

(b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;

(c) that the grant 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;

(d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either-

(i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court has ordered or allowed; or

(ii) to proceed diligently with the administration of the estate; or

(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or

(e) that the grant has become useless and inoperative through subsequent circumstances.”

11. In Musa Nyaribari Gekone & 2 Others v Peter Miyienda & another [2015] eKLR, the Court of Appeal held that:

“The expression “any interested party” as used in the foregoing provision, in its plain and ordinary meaning, is in my view wide enough to accommodate any person with a right or expectancy in the estate.”

12. The expression “*any interested party*” as used in the foregoing provision, in its plain and ordinary meaning, is in my view wide enough to accommodate any person with a right or expectancy in the estate such as the Applicant herein. The Applicants who are son and daughter in law to the deceased are beneficially entitled to the estate of deceased and on that basis, they have *locus standi* to present the application for revocation of the grant.

13. It is on record that the deceased had three wives and several children some of whom are deceased. It was therefore not open to Joseph Abok Ogola (*deceased husband to the Respondent*) the administrator in this case to allocate the deceased’s estate solely to himself thereby disinheriting all the children of the deceased from the 2nd and 3rd house.

14. As clearly pointed hereinabove, the 1st Objector and two others had filed a prior objection which was dismissed for the reason that it was premature. An affidavit filed by Joseph Abok Ogola (*deceased husband to the Respondent*) who was the administrator in this case in response to that objection discloses that he acknowledged that the deceased had 3 wives and that the deceased’s children included James Juma Abok (*1st Objector*), John Ayieye Abok (*deceased husband to the 2nd Objector*) and Richard Dwasi Abok.

15. Of interest to note however is that at the time of applying for confirmation of the grant, Joseph Abok Ogola (*deceased husband to the Respondent*) who was the administrator in this case failed to disclose to the court that there were other persons beneficially entitled to the estate of deceased and thereby obtained the grant in his sole name. His actions lead this court to the conclusion that the grant was obtained by the making of a false statement and by concealment from the court of something material to the case and ought to be revoked.

16. On the same breath, the Letters of Administration issued to Joseph Abok Ogola the administrator in this case are similarly revoked since he is deceased.

17. Section 40 of the Law of Succession Act (*the Act*) provides: -

(1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.

(2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38.

18. From the evidence on record, it has been demonstrated that the 1st house of the deceased through Joseph Abok Ogola (*deceased husband to the Respondent*) who was the administrator in this case had previously benefitted from deceased’s estate. Applying the provisions of Section 42 of *the Act*, I am persuaded that the suit property ought to devolve to only the 2nd and 3rd house.

Disposition

19. Consequently, I am satisfied that the Objectors have made out a case for revocation of the letters of administration and the grant issued in this cause. As a result, it is hereby ordered **THAT**:

a) Letters of administration issued on 22nd October, 1997 to Joseph Abok Ogola are hereby revoked.

b) The subsequent Certificate of Confirmation of Grant issued in favour of Joseph Abok Ogola on 18th July, 2000 is correspondingly revoked.

c) JAMES JUMA ABOK (1st Objector) is hereby appointed as the administrator of deceased's estate

d) The Land Registrar, Kisumu County is directed to cancel title deed in respect of L.R. NO. WEST KISUMU/KARATENG/485 issued to GRACE ONDU OGOLA and revert its ownership to JOHN ABOK OGOLA

e) Upon issuance of the letters of administration, JAMES JUMA ABOK shall within 30 days apply for confirmation of the grant after identifying respective shares of each of the beneficiaries to the estate

f) I directed that this order and the Application for confirmation of the grant be served on the Respondent

g) I make no order for costs

DELIVERED AND SIGNED AT KISUMU THIS 21ST DAY OF NOVEMBER 2019

T. W. CHERERE

JUDGE

READ IN OPEN COURT IN THE PRESENCE OF-

Court Assistants - Amondi/Okodoi

Objectors/Applicants - Present in person

Respondent - N/A