



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISUMU**

**(CORAM: CHERERE-J)**

**SUCCESSION CAUSE NO. 581 OF 2014**

**IN THE MATTER OF THE ESTATE OF ODHIAMBO KIDIALA (DECEASED) BETWEEN**

**WILLIAM ONYANGO ORIRI.....OBJECTOR/APPLICANT**

**AND**

**EDWIN OWINO ATINGA.....PETITIONER/RESPONDENT**

**JUDGMENT**

1. Odhiambo Kidiala (*deceased*) died sometimes on 01st July, 1980. His estate comprised of L.R. NO. NORTH SAKWA/MARANDA/21.
2. On 05th October, 2012, Letters of Administration, were issued to Edwin Owino Atinga (*Petitioner/Respondent*) in his capacity as grandson of the deceased.
3. Subsequently, a Certificate of Confirmation of Grant was issued in favour of the Petitioner/Respondent of 17th April, 2013.
4. On the strength of the said Confirmation of Grant, the Petitioner/Respondent caused the estate to be subdivided into two land parcels namely L.R. NO. NORTH SAKWA/MARANDA/2337 and L.R. NO. NORTH SAKWA/MARANDA/2338 both of which were registered his name.

**Application**

5. By summons dated 30th September, 2014 filed on even date, the

Objector/Applicant prayed for order:

- 1) An injunction to restrain the Petitioner/Respondent from selling, offering for sale, alienating, disposing off or in any other manner dealing with land parcels L.R. NO. NORTH SAKWA/MARANDA/2337 and L.R. NO. NORTH SAKWA/MARANDA/2338
  - 2) Revocation of the Letters of Administration and Confirmation of Confirmation of Grant issued to the Petitioner/Respondent
  - 3) Revocation of registration dated 08th October, 2012 relating to land parcel L.R. NO. NORTH SAKWA/MARANDA/21 from the name of the deceased into the names of the Petitioner/Respondent
  - 4) Revocation of registration dated 19th December, 2012 relating to land parcels L.R. NO. NORTH SAKWA/MARANDA/2337 and L.R. NO. NORTH SAKWA/MARANDA/2338 into the names of the Petitioner/Respondent
  - 5) Rectification of the title so as to revert it its original number in the name of the deceased
6. By a consent of the parties recorded on 17th December, 2018, prayers 3, 4 and 5 above were allowed. The same having been allowed, prayer 1 was also deemed as having been allowed.
  7. The issue pending for determination is whether the Letters of Administration and Confirmation of Confirmation of Grant issued to the Petitioner/Respondent ought to be revoked.

### Objector/Applicant's case

8. The Objector/Applicant stated that deceased who was brother to his father was not married and had no children. It was his evidence that deceased had 3 siblings who are deceased and they included his father Petro Atinga who had 9 children, Janes Atinga who had one child and Grado Kidiala who had one child also.

9. The Objector/Applicant faulted the Petitioner/Respondent who is the son of his brother John Atinga, for distributing the deceased's estate solely to himself thereby disinheriting all the other beneficiaries. In support of his case, the Objector/Applicant tendered Green Card relating to land parcel L.R. NO. NORTH SAKWA/MARANDA/21 which indicates that an entry dated 08th October, 2012 caused the title to be registered from the name of the deceased into the names of the Petitioner/Respondent. Further an entry dated 19th December, 2013 demonstrates that the said land parcel was sub-divided into two portions L.R. NO. NORTH SAKWA/MARANDA/2337 and L.R. NO. NORTH SAKWA/MARANDA/2338 which were registered into the names of the Petitioner/Respondent as supported by the tendered copies of title deeds.

### Petitioner/Respondent's case

10. The Petitioner/Respondent and his counsel did not attend the hearing. By his replying affidavit sworn on 10th November, 2014 and filed on 11th November, 2014, Petitioner/Respondent concedes that he caused the deceased's estate to be distributed solely to himself and that it was subsequently sub-divided into two portions which were registered in his name. While on one hand claiming that the Objector/Applicant was not related to the deceased, he goes ahead to aver that the Objector/Applicant had benefitted from deceased's estate in that the deceased had given him 5.7 Hectares of land whose title number he did not disclose.

### Analysis and Determination

11. I have considered the objection vis-à-vis the evidence on record. Section 76 of the Law of Succession Act (*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.”

12. 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.”

13. 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.

14. It is on record that the deceased had three siblings who had children who include the Objector/Applicant and Petitioner/Respondent's father among others. Under the provisions of Section 39 of *the Act*, the Applicant, his brothers and cousins who are nephews and nieces of deceased rank in priority to the Petitioner/Respondent who is a grandson of the deceased and it was therefore not open to the Petitioner/Respondent to allocate the deceased's estate solely to himself thereby disinheriting all the other beneficiaries.

15. Petitioner/Respondent's actions lead this court to the conclusion that the Letters of Administration and Certificate of Confirmation of Grant issued to him on 05th October, 2012 and 17th April, 2013 respectively were obtained fraudulently and by the making of a false statement and by concealment from the court of all the beneficiaries of the deceased and ought to be revoked.

Disposition

19. Consequently, I am satisfied that the Objector/Applicant has made out a case for revocation of the Letters of Administration and Certificate of Confirmation of Grant issued in this cause. As a result, it is hereby ordered THAT:

- a) Letters of administration issued on 05th October, 2012 to EDWIN OWINO ATINGA are hereby revoked.
- b) The subsequent Certificate of Confirmation of Grant issued on 17th April, 2013 to EDWIN OWINO ATINGA is correspondingly revoked.
- c) WILLIAM ONYANGO ORIRI (Objector/Applicant) is hereby appointed as the administrator of deceased's estate
- d) Upon issuance of the Letters of Administration, WILLIAM ONYANGO ORIRI shall within 30 days apply for confirmation of the grant after identifying respective shares of each of the beneficiaries to the estate
- e) I make no order for costs

**DELIVERED AND SIGNED AT KISUMU THIS 19th DAY OF December 2019**

**T. W. CHERERE**

**JUDGE**

READ IN OPEN COURT IN THE PRESENCE OF- Court Assistants - Amondi/Okodoi

For Objector/Applicant - Mr Njoga/ Mr Odongo

For Petitioner/Respondent -