



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT HOMA BAY

SUCCESSION CAUSE NO.12 OF 2017

IN THE MATTER OF THE ESTATE OF: SAMSON NYOKECH ALUOCH...DECEASED

AND

GEORGE OTIENO MBAI.....OBJECTOR/APPLICANT

VERSUS

FREDRICK OMONDI MBAI.....1ST RESPONDENT

CALVINCE ODHIAMBO OUMA.....2ND RESPONDENT

RULING

[1] The Notice of Motion dated 2nd September 2019, comes herein under the provisions of **Order 45 Rules (1) and (2)** of the **Civil Procedure Rules** for an order to review the ruling of this court made on 13th June 2018 at Eldoret and delivered on 17th December 2018, at Homa Bay.

In essence, the ruling was a determination of the applicant's/objector's summons for revocation of grant dated 6th April 2017, in which the applicant, **George Otieno Mbai**, sought the revocation of the grant of letters of administration issued to the first respondent/petitioner on 9th December 2013 by the magistrate's court at Rongo and confirmed on the 10th December 2013, in favour of the first respondent and the second respondent **Calvince Odhiambo Ouma**. The two were to share the sole estate property described as **Kanyada/Kanyabala/1047** with the first respondent taking 2.2 hectares and the second respondent taking 1.4 hectares.

[2] The summons was heard by way of written submissions after which the court rendered the impugned ruling which in effect revoked the grant issued to the first respondent together with the accompanying certificate of confirmation of grant and ordered that the titles resulting from their invalidated distribution of the estate be cancelled and be reverted to the name of the deceased **Samson Nyokech Aluoch** pending proper succession. It is against that background that this application was brought under the provisions of the **Civil Procedure Act and Rules** rather than the law of **Succession Act**, with a view to remedy errors apparent on the face of the record or ruling. None of the respondents filed any grounds of opposition or a replying affidavit in opposition to the application.

[3] Having given due consideration to the application which by dint of **Rule 63** of the **Probate and Administration Rules** is competent before this court in so far as it is brought under the provisions of the Civil Procedure Rules, it is the finding of this court that the application is merited as there are clear errors on the face of the record in relation to the description and/or identification of the second respondent by the name **Calvince Odhiambo Mbai** instead of **Calvince Odhiambo Ouma** and the reference land registrar – Kosewe instead of land registrar – Homa bay.

Accordingly, the ruling be amended forthwith to reflect the correct description of the parties and the correct reference of the land registrar.

[4] Basically, the provisions of the Civil Procedure Act and Rules would not apply in succession matters save as expressly provided under the law of Succession Act and Rules. (See, **Wangai Gichuki –vs- Daniel Wanjigo Muchemi (2014) e KLR** and **Shah –vs- Shah (2002) 2 KLR 607**).

Under **Rule 63 (1)** of the **Probate and Administration Rules**, **Order 45** of the **Civil Procedure Rules** is one of such Rules imported into succession cases.

The Rule (i.e. 63 (1) Probate and administration Rules) provides that:-

“Save as is in the Act or in these Rules otherwise provided, and subject to any order of the court or a registry in any particular case for reasons to be recorded the following provisions of the Civil Procedure Rules, namely Order 5, Rule 2 to 34 and Orders 11, 16, 19, 26, 40, 45, and 50 (Cap 21 sub-leg) together with the High Court (Practice and Procedure) Rules (Cap 8 sub-leg) shall apply so far as relevant to proceedings under these Rules”.

[5] **Order 45 Rule 1** of the **Civil Procedure Rules**, basically provides for review of a decree or order on account of some mistake or error apparent on the face of the record “inter alia”.

The applicant has given satisfactory reasons for this court to exercise discretion in his favour.

In sum, this application is allowed as prayed with each party bearing their own costs.

Ordered accordingly.

J.R. KARANJAH

JUDGE

19.12.2019

[Delivered and signed this 19th day of December, 2019]

[In the presence of M/s Songwa for second respondent]