



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT HOMA BAY**

**SUCCESSION CAUSE NO.39 OF 2014**

**FORMERLY PM'S COURT HOMA BAY**

**SUCC. CAUSE NO.268 OF 2012**

**IN THE MATTER OF THE ESTATE OF:**

**MUGA OYUGI OBONG'O alias MUGA OYUGI.....DECEASED**

**AND**

**PETERLIS OTIENO OWUOR.....OBJECTOR/APPLICANT**

**VERSUS**

**PETER OYUGI OCHINY.....RESPONDENT/PETITIONER**

**RULING**

[1] The summons for revocation of grant dated 13<sup>th</sup> June 2019, was taken out by **Peterlis Otieno Owuor** (objector/applicant) against **Peter Ayugi Ochiny** (Petitioner/Respondent) on the basic grounds that the applicant is a grandson of the deceased, **Muga Oyugi Obong'o**, also known as **Muga Oyugi**, and the rightful administrator of the deceased's estate for reasons that he took care of the deceased during his old age and catered for the befitting sendoff accorded to him (deceased). That, the petitioner, though a relative of both the deceased and applicant is not a direct beneficiary of the deceased's estate and has no beneficial rights in respect thereof. That, in a meeting of village elders and an assistant chief, it was resolved that the applicant be the administrator of the estate of the deceased.

[2] These grounds are fortified by the applicant's averments contained in his supporting affidavit dated 13<sup>th</sup> June 2019, but were opposed by the petitioner on the basis of the grounds set out in his replying affidavit dated 17<sup>th</sup> October 2019, which in essence indicates that the applicant is not a grandson of the deceased but of the deceased's cousin called Obala Onduru and that he (the petitioner) is a nephew of the deceased. The petitioner therefore, implied that as between himself and the applicant, he was more suitable to petition for grant of letters of administration respecting the estate of the deceased.

Indeed, it was after such petition that the grant of letters of administration intestate was issued to the petitioner on 26<sup>th</sup> February 2013, by the magistrate's court at Homa Bay and was effectively confirmed on 28<sup>th</sup> November 2013.

[3] However, the grant and the ensuing certificate of confirmation of grant were challenged by the applicant in an application for revocation of the same vide a summons for revocation of grant dated 26<sup>th</sup> August 2016. It was in the process revealed that the applicant had already obtained another grant of letters of administration respecting the estate of the deceased on the 17<sup>th</sup> December 2014, which was confirmed on 5<sup>th</sup> May 2016.

On 30<sup>th</sup> January 2019, when the aforementioned summons for revocation of grant came up for hearing, both the applicant and the petitioner through their respective advocates recorded a consent in the following terms:-

**“By consent, the previous grant issued to the petitioner/applicant and respondent be and are hereby revoked and a fresh grant be issued in the names of the applicant, Peterlis Otieno Owuor and the objector, Peter Oyugi Ochiny and subject to agreement on mode of distribution the same be confirmed on 26/3/19”.**

[4] There was no confirmation of the new grant on 26<sup>th</sup> March 2019 as intended. The reason for this was that the applicant/objector Peterlis Otieno Owuor, filed a notice of motion dated 22<sup>nd</sup> March 2019 for orders to review, vacate and/or set aside the aforementioned consent.

After due consideration of the motion on the basis of the supporting grounds and those in opposition thereto, this court found it devoid of merit and dismissed it.

But, instead of agreeing on a mode of distribution for purposes of confirmation of the grant issued by consent on 30<sup>th</sup> January 2019, the applicant/objector filed the present application for revocation of grant vide the summons for revocation of grant dated 13<sup>th</sup> June 2019.

[5] This second application for revocation of the grant by the same party was heard by way of written submissions which were duly considered by this court.

To say the least, the present application is a gross abuse of the court process by the applicant and must be dismissed for what it is in accordance with **Section 73** of the **Probate and Administration Rules**.

In any event, none of the grounds in support of the application fall within the provisions of **Section 76** of the **Law of Succession Act** which provides for circumstances under which a grant of letters of administration may be revoked.

In sum, this application stands dismissed for being an abuse of the court process and for lacking in merit with an order that the grant issued on 30<sup>th</sup> January 2019 be confirmed at the instance of any of the joint administrators within the next six (6) months from this date hereof, failure to which the matter be forthwith referred to the public trustee to undertake the distribution of the estate of the deceased among the lawful and/or rightful beneficiaries.

Ordered accordingly.

**J.R. KARANJAH**

**JUDGE**

**18.12.2019**

**[Delivered and signed this 18<sup>th</sup> day of December, 2019]**

[In the presence of both the applicant and Respondent

both appearing in person]