



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

SUCCESSION CAUSE NO. 442 OF 2015

IN THE MATTER OF THE ESTATE OF: OKALO OSUTA (DECEASED)

BETWEEN

SIMEON ONYOLE OKAL

SIPROSE ANYANGO AJUOGA

JOSEPH OWINO

DANCAN OTIENO MKAMI.....BENEFICIARIES/APPLICANTS

AND

HARRISON OTIENO OWILAPETITIONER/RESPONDENT

RULING

1. By a Chamber Summons dated 15/08/2014 the Applicants sought to review and set aside the orders of confirmation of the grant claiming that the court did not ascertain the respective shares of the beneficiaries but instead granted the Petitioner the entire estate property which he has continued to mismanage to the total exclusion of all the other beneficiaries thereby disinheriting them.
2. The Applicants further prayed that once the said orders are set aside a fresh confirmation be done where all the beneficiaries shall participate to enable the Court to ascertain and transfer the shares to the respective beneficiaries. The Applicants further decried that the Petitioner has not shown any intention to distribute the estate property which is comprised of the parcel of land known as **Kanyamkago/Kawere II/797** for the last 7 years post the confirmation. The Applicants also pray that once the review is granted they be made joint Administrators with the Petitioner.
3. The application was opposed by two people; the Petitioner and one **Samwell Ochieng Onyango** who both filed Replying Affidavits. The Petitioner admitted that the estate property was duly registered in his names pursuant to the confirmation of the grant and that he was holding it in trust of all the other lawful beneficiaries. He categorically denied disinheriting the other beneficiaries and contended that save for **Simon Onyole Okal** the rest of the Applicants are not beneficiaries to the estate. He expressed his intention to distribute the property upon the conclusion of **Kisii Environment and Land Court Civil Suit No. 295 of 2011 (O.S.)**, a suit filed by the Petitioner against some alleged trespassers.
4. **Samwell Ochieng Onyango** deponed that he was the lawful husband to **Siprose Anyango Ajuoga**, the second Applicant herein, and that **Dancan Otieno Mikami** was their son. He categorically denied that **Siprose Anyango Ajuoga** and **Dancan Otieno Mikami** were entitled to inherit from the estate of the deceased herein.
5. Counsels for the parties filed their respective submissions hence this ruling. I have carefully read and understood the contents of the application, the Replying Affidavits, the parties' submissions and the respective decisions tendered in support of each of the parties' cases. I have also perused the lower court record on which the confirmation proceedings were undertaken and the resultant Certificate of Confirmation of the Grant.
6. The legal basis for confirmation of grants is provided in **Section 71** of the **Law of Succession Act, Cap. 160** of the Laws of Kenya. In cases of intestacy, like in this case, *'the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed such grant shall specify all such persons and their respective shares.'*
7. The confirmation proceedings before the lower court revealed some beneficiaries to the estate of the deceased. However, the court on

confirmation of the grant transferred the whole of the estate property into the names of the Petitioner '**absolutely**'. I have so confirmed in the Certificate of Confirmation of the Grant dated 08/03/2010. The result of the confirmation proceedings is that the grant was not confirmed in accordance with the law. The property was wholly and absolutely transferred into the name of the Petitioner thereby effectively disinheriting all the other beneficiaries. I say so because the Certificate of Confirmation of the grant does not state that the Petitioner holds the property in trust of the other unnamed beneficiaries. But even if the confirmation stated that the Petitioner was holding the property in trust, as he alleges in his affidavit, still the lacuna stands since the identities and shares of the beneficiaries are not ascertained.

8. I am therefore satisfied that the lawful beneficiaries to the estate of the deceased have a valid complaint in this matter. There is a glaring error on the face of the record in that the confirmation of the grant resulted in disinheriting the other beneficiaries. The application is appropriately anchored in the law as well.

9. This matter involves several beneficiaries amid contentions that some are not so. Those are sensitive matters, and which call for careful consideration by the court prior to confirmation of the grant. A Court is under a duty to accord anyone who alleges to have a claim over the estate an opportunity to be heard. That is the essence of **Article 50(1)** of the **Constitution**. The application is therefore merited.

10. In the wider interests of justice and in consideration of the provisions of **Article 159(2)(d)** of the **Constitution** and the **Law of Succession Act** and with a view to deal with the issues in this matter substantively, I hereby make the following orders: -

(a) The Grant, the confirmation proceedings and the resultant Certificate of Confirmation of the Grant be and are hereby revoked.

(b) A Fresh Grant shall be issued in the joint names of the Petitioner and Simeon Onyole Okal.

(c) The Administrators' and/or any of them to file for the confirmation of the Fresh Grant within 21 days of issuance of the Grant.

(d) The application for confirmation of the grant shall be served upon all the beneficiaries and shall be fixed for directions within 30 days of filing.

(e) The interim orders issued on 14/10/2014 shall remain in force pending the determination of the confirmation proceedings.

These are the orders of this Court.

DELIVERED, DATED and SIGNED at MIGORI this 08th day of March 2018.

A. C. MRIMA

JUDGE

Judgment delivered in open Court and in the presence of: -

Mr. Kisera Counsel instructed by Messrs Omonde Kisera & Co. Advocates for the Applicants.

Mr. Nyagesoa Counsel instructed by Messrs Nyagesoa & Co. Advocates for the Petitioner.

Ms. Nyauke - Court Assistant