



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

PROBATE & ADMINISTRATION NO. 47 OF 2015

IN THE ESTATE OF WILFRIDA MAKOKHA SIKO....DECEASED

BETWEEN

JOSEPH OMONDI MUHEYA.....PETITIONER

AND

FREDRICK OKOCH OSIKO.....OBJECTOR

RULING

1. **FREDRICK OKOCH OSIKO**, the applicant/ objector herein filed an application dated 22nd October 2015 for revocation and annulment of the grant issued herein under section 76 of the Law of Succession Act, Cap. 160 and Rules 44 and 73 of the Probate and Administration Rules. It is premised on the following grounds:

- a) That the proceedings to obtain the grant were defective in substance.
- b) That the grant was obtained fraudulently by making a false statement or by concealment of material facts.
- c) That the petitioner/ respondent does not rank in priority in succeeding the estate of the deceased but it is the objector who ranks as such.

2. The application was opposed by the petitioner/respondent on grounds that he has distributed the estate among his three brothers who include the objector herein.

3. I have perused the affidavits of both parties. The following facts have emerged:

- a) That the petitioner does not deny the contention of the objector that he was not a son of the deceased **WILFRIDA MAKOKHA SIKO**.
- b) That the applicant's contention that he was the son of the late **WILFRIDA MAKOKHA SIKO** has not been denied.
- c) That the letter of the chief Lwanya Location dated 20th February 2014 clarifies this position and indicates that the objector's and the petitioner's fathers were brothers and that the objector's mother was inherited by the petitioner's father.

4. Section 76 of the Law of succession provides inter alia 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;

5. Rule 44 (1) of Probate and Administration Rules provides for the form of the application.

6. The petitioner did not therefore rank higher than the objector in succeeding the late **WILFRIDA MAKOKHA SIKO**'s estate.

7. I therefore find that the application is merited. The grant to the respondent is annulled and the petitioner is hereby issued with a grant.

8. The costs of this application to the applicant.

DELIVERED and SIGNED at BUSIA this 19th day of April, 2018

KIARIE WAWERU KIARIE

JUDGE