



IN THE HIGH COURT OF KENYA AT BUSIA

PROBATE & ADMINISTRATION NO. 458 OF 2014

IN THE ESTATE OF:- EKESA EKAKORO OKURU.....DECEASED

BETWEEN

JOHN EKESA.....PETITIONER/ RESPONDENT

AND

GADHI EJAPU IKAKORO.....OBJECTOR /APPLICANT

RULING

1. **GADHI EJAPU IKAKORO**, the applicant herein filed an application dated 16th December 2015 for revocation and annulment of the grant issued herein under sections 76 and 83(d) of the Law of Succession Act, Cap. 160 and Rules 44 (1) 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 does not rank in priority to the deceased estate and is out to disinherit the heirs.

2. The application was opposed by **JOHN EKESA**, the petitioner/respondent on the following grounds:

- a) That land parcel number **SOUTH TESO/AMUKURA/166** was registered in the name of **EKESA EKAKORO OKURU**, deceased.
- b) That **EKESA EKAKORO OKURU** was his father.
- c) That the applicant has no relationship with **EKESA EKAKORO OKURU** and therefore not a beneficiary.

3. The grounds for revocation of a grant under Section 76 of the Law of Succession Act were summarised in the matter of the Estate of **Murathe Mwaria -deceased in Nairobi HCCC NO.875/2005**] by **Koome J** as follows:-

- i. when the procedure followed in obtaining the grant is defective in substance.**
- ii. when the grant is obtained fraudulently by making a false statement.**
- iii. making an untrue allegation of fact essential in point of law to justify the grant.**
- iv. or when the person who has the grant has failed to proceed diligently with the administration of the estate.**

4. I have perused the affidavits of both parties and the following facts have emerged:

- a) The land parcel number **SOUTH TESO/AMUKURA/166** was registered in the name of the deceased herein in 1972 and only changed ownership to the respondent on 22/12/2015. This was pursuant to the grant issued herein.
- b) That the applicant has not demonstrated that he is a beneficiary of the estate of the deceased **EKESA EKAKORO OKURU**.
- c) The deceased **EKESA EKAKORO OKURU** was not indicated to be holding land parcel number **SOUTH**

TESO/AMUKURA/166 in trust for anybody. We cannot therefore impute trust. The nature of the title was indicated as **ABSOLUTE**. At no time during the lifetime of the deceased did the objector or any other person challenge the title in respect of land parcel number **SOUTH TESO/AMUKURA/166**. In any case, this is not a claim that can be made by a mere objection.

5. From the foregoing observations, I make a finding that the respondent herein obtained the grant herein legally.

6. The objection is therefore dismissed with costs.

DELIVERED and SIGNED at BUSIA this 29th day of May, 2018

KIARIE WAWERU KIARIE

JUDGE