



REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
SUCCESSION CAUSE NO. 460 OF 2008
IN THE MATTER OF THE ESTATE OF
ERASTO OPONDO OTIENO (DECEASED)
AND IN THE MATTER OF APPLICATION BY

BETWEEN

PATRICIA OTIENO OPONDO APPLICANT

AND

LAWRENCE OTIENO OPONDO PETITIONER/ RESPONDENT

RULING

1. **Erasto Opondo Otieno** (“the deceased”) died intestate on 29th May 1984 and a grant of letters of administration was issued to **Lawrence Opondo Otieno** (“Lawrence”) on 4th November 2008. In his affidavit in support of petition for letters of administration intestate, he named himself, his mother and the deceased’s widow, Teresa Aluoch Opondo and his brother, Richard Okumu Opondo as the only surviving beneficiaries of the deceased.

2. Before the grant could be confirmed, **Patricia Otieno Opondo** (“Patricia”), claiming to be the deceased’s widow, filed the summons for revocation of the grant issued to Lawrence. The grounds were that a grant of letters of administration in respect of the deceased’s estate had already been issued to Richard Okumu Opondo in *Siaya RMC Succession Cause No. 22 of 1997* and that the grant issued to the respondent was obtained fraudulently. She claimed that Lawrence was an imposter who was trying to disinherit her by filing suit against her using a fraudulent grant.

3. Lawrence filed a replying affidavit in which he denied the Patricia’s claims. He deponed that the deceased married several times. The deceased’s first wife, Omenya Nyaimbo died in 1964 without children. He divorced Achola Nyamarama who left without children while Margaret Odongo was divorced but had one daughter Helida Okumu. Magdalina Ahende died in 2006 without any children while Teresa Aluoch was married in 1965 and was blessed with three children; Monica Ondule, Lawrence Otieno Opondo and Rosemary Adhiambo.

4. Lawrence further deponed that the deceased married Patricia in 1969 but they separated in 1972. He stated that in 1983, Patricia married one Charles Okoth and they lived together until 1989 when she returned to the deceased’s home in 1992 but left again in 1994 after demolishing the structure that the deceased had put up for her in the homestead. She thereafter married Onyango Nala at Mbaga Mission

Catholic Church.

5. Lawrence stated that Richard Okumu Opondo is the son of the deceased's brother, Oloo Monye and Teresia Aloo Oloo as such he was not a beneficiary of the estate. He contended that Patricia joined hands with Richard in order to fraudulently acquire one of the deceased parcels of land, LR No. 12045/61, by filing ***Siaya PMCC No. 31 of 2008 (John Odhiambo Ogutu & Patricia Agola Opondo v Teresia Aluoch Ochieng alias Teresia Aluoch Opondo & Lawrence Otieno Opondo)***.

6. In addition to the depositions, the parties gave oral testimony. Patricia (PW 1) testified that she was the deceased's third wife and her co-wives were Teresia Aloo and Magdalene Adala. She told the court that Magdalene Adala did not have children whereas Teresia Aloo was blessed with two children; a daughter and a son, Richard Okumu Opondo. She stated that Richard Okumu Opondo had three children but in the year 1997 he disappeared without trace. Patricia further testified that the respondent was not a son of the deceased and he was just an imposter who had chased her away from her home thereby forcing her to seek refuge in the house of Jacob Onyango, a relative to her deceased husband.

7. John Muruka Omolo (PW 2), a cousin to the deceased, testified that at the time of the deceased death, he lived in the same homestead and Patricia was one of the deceased's three wives. On cross-examination, PW 2 denied that he stood surety for the respondent and stated that he did not sign any of the forms in support of the petition. He told the court that after the deceased demise, Patricia was inherited by Jacob Onyango Nala and that is where she lived.

8. Lawrence Otieno Opondo (DW 1) adopted his deposition and testified that the deceased had only two sons; himself and Richard Okumu Opondo who disappeared but left behind some children. He told the court that after the deceased's death, Patricia went to live with Jacob Onyango and they later celebrated a Christian marriage with him at Mbagha Catholic Church and became his wife.

9. John Ohanga Mulongo (DW 2), who is a catechist at Mbagha Catholic Church, produced in court a marriage case book in which Patricia and Jacob recorded their statement of intention to marry on 19th February 1997. He further testified that prior to the wedding ceremony, he counseled them prior to the wedding ceremony conducted by the priest. DW 2 also produced in the church marriage register which showed that Patricia indeed married Jacob. He told the court that the couple were not issued with a marriage certificate as they did not pay for it.

10. Under **section 76(b)** of the ***Law of Succession Act*** the court may on application or on its own motion revoke a grant of representation on the ground that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law. It is incumbent upon the party making an application for revocation or annulment of grant to demonstrate the existence of any, some or all of these grounds for the court to revoke the grant of representation.

11. The first ground of attack relates to the grant issued to Richard Okumu Opondo in ***Siaya RMC Succession Cause No. 22 of 1997***. I have perused the application and supporting deposition and I note that no grant has been annexed to prove that Richard Okumu was issued with one. What is annexed is a copy of a petition filed by Richard Okumu Opondo, an affidavit of justification of proposed sureties sworn by John Odhiambo Okumu and Maria Odhiambo and a notice of filing the petition. The applicant has failed to show that a grant of representation for the deceased's estate has been issued. My finding is fortified by the fact that when Patricia sued Teresia and Lawrence in respect of one of the deceased's properties; LR No. Siaya/12045/91 in ***Siaya PMCC No. 31 of 2008 (John Odhiambo Ogutu & Patricia Agola Opondo v Teresia Aluoch Ochieng alias Teresia Aluoch Opondo & Lawrence Otieno Opondo)***, she did not disclose that a grant had been issued to Richard Okumu, a fact which at the time of filing the suit, was already within her knowledge. This ground is dismissed.

12. The second ground of attack is that Lawrence is an imposter and not a son of the deceased. When Lawrence commenced these proceedings, he filed the Chief's letter dated 25th July 2008 which stated that

the deceased had two sons; Lawrence and Richard. Apart from the Patricia's word, I find nothing in her evidence and depositions to show that Lawrence was not the deceased's son. The denial of PW 2 that he did not sign the documents in support of the petition rings hollow and in fact tends to support the fact that he knew that Lawrence was the deceased's son.

13. According to the evidence led by Lawrence, Patricia had lost her right to the deceased estate when she re-married. **Section 35** of the ***Law of Succession Act*** provides that a widow's interest in the deceased estate terminates if she re-marries. There is sufficient evidence on record that the Patricia married Jacob Onyango at Mbaga Catholic church. PW 2 confirmed that Patricia was in fact living with Jacob Onyango. She thus lost her interest in the deceased's estate and has no *locus standi* to apply for revocation of grant as she is no longer a beneficiary.

14. In short, Patricia has not proved her case to the required standard. The summons for revocation of grant dated 5th June 2012 is dismissed with costs. Since Lawrence admitted that his brother, Richard, had children, he must disclose those children as they are beneficiaries of the deceased's estate through their father. The petitioner shall move to confirm the grant within the next 30 days.

DATED and DELIVERED at KISUMU this 24th day of April 2017

D. S. MAJANJA

JUDGE

Mr Adiso instructed by Jaleny and Company Advocates for the applicant.

Mr Maube instructed by Bruce Odeny and Company Advocates for the petitioner/respondent.