



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

Succession Cause No. 76 Of 2015

IN THE MATTER OF THE ESTATE OF OBILA OCHOLA (DECEASED)

-BETWEEN-

DANIEL ONYANGO OBILA & 9 OTHERS.....OBJECTORS/APPLICANTS

-VERSUS-

HENRY OMOLO OBILA.....PETITIONER/RESPONDENT

RULING

1. By the Summons for revocation dated 27/02/2015 and filed on 02/03/2015, the Applicants herein applied for the revocation of the grant of the representation in respect of the estate of **Obila Ochola** which was issued to the Petitioner/Respondent and subsequently confirmed on 20/11/1998. That was before the then Principal Magistrate's Court's at Migori.

2. It is generally agreed that the parties herein are members of the family of the late Obila Ochola ('**the deceased**') save the contention that one of them is not since he is instead a foreigner. It is also not in dispute that the family of the deceased had held meetings and appointed the Respondent to take out the succession proceedings.

3. The Applicants are now in Court seeking the revocation of the grant of representation issued to the Respondent citing several grounds including that the grant was issued through concealment of material facts, that the lower court lacked the jurisdiction, that the Respondent had failed to administer the estate properly and the same is being wasted to the detriment of the applicants, that the Respondent had clandestinely disposed of the property forming part of the estate, among others.

4. The application was strenuously opposed.

5. Upon taking directions, the application was heard by way of oral evidence since the Applicants, unlike the Respondent, were unrepresented. That so happened and the evidence of three witnesses on the part of the Applicants was recorded. They were **DANIEL ONYANGO OBILA, MARGARET AKETCH** and **JOSEPH OTIENO OBILA**.

6. On his part, the Respondent was the sole witness.

7. This Court observed the parties keenly as they testified and it was clear that the Applicants were deeply united against the Respondent accusing him of all manner of ill-doings. I have considered and evaluated the evidence on record and find that the ground on the part of the Applicants that mainly surfaced was that the relationship between the Applicants and the Respondent, at the family level, had broken down to

an extent that the trust between the Applicants and the Respondent was highly eroded. The Applicants were feeling so insecure in the hands of the Respondent and would not wish him to proceed further with the administration of the estate. To that end, they alleged that the Respondent was not administering the estate properly as he would not allow the Applicants access to their farms and he had for long threatened to shoot some of the Applicants or have them locked up by the police. To them, dealing with the Respondent, as the administrator of the estate was unbearable. They prayed that the application be allowed for the sake of good administration of the estate.

8. On the other hand, the Respondent denied any wrong-doing and indicated that he had already taken steps to distribute the estate in accordance with how the members were settled by the deceased on the ground.

9. The fact that the deceased was polygamous was generally agreed. What was in contention was the number of his wives. Whereas the Applicants alleged that the deceased had five wives, the Respondent held that they were only four wives. There was however no dispute to the fact that Respondent was one of the sons of the deceased.

10. From this Court's assessment of the evidence and the observation of the demeanors of the witnesses as they testified, there is no doubt that all is not well in the family of the deceased. The animosity between the Applicants and the Respondent was on several instances so overwhelmingly depicted during the hearing of the application. That calls for this Court's intervention.

11. But who is an administrator in succession proceedings? **Section 3** of the Law of Succession Act (hereinafter referred to as '**the Act**') defines an Administrator in the following terms: -

“Administrator” means a person to whom a grant of letters of administration has been made under this Act”.

The Black's Law Dictionary defines an administrator as follows: -

“A person appointed by the court to administer (i.e. manage or take charge of) the assets and liabilities of a decedent (i.e. deceased).

And, **The Law Dictionary** describes an Administrator in the following manner: -

“In the most normal sense of the word, is a person to whom letters of administration, that is, an authority to administer the estate of a deceased person, have been granted by the proper Court. He resembles an executor, but, being appointed by the Court and not by the deceased, he has to give security for the due administration of the estate, by entering into a bond with sureties, called the administrator land.”

12. An administrator therefore is a Court appointee with specific duties. In the words of Hon. Justice Fred A. Ochieng in the case of **Paul Tono Pymto & Another vs. Giles Tarpin Lyonnet (2014) eKLR** the Learned **Judge** had the following to say about the role of an administrator: -

“Meanwhile, Administrators must also appreciate that their role is to gather together all the assets of the deceased. They then also identify the liabilities.

They have no authority to dispose of assets without express orders from the Court. They do not even have authority to distribute the assets.

When they have paid –off all liabilities, the Administrators must return to the court, to seek authority to distribute the remaining assets to the beneficiaries. I have deemed it necessary to point out these two points, because all too often, there is unnecessary anxiety following the appointment of administrators, if we think that they do not ordinarily, support one or another dependent. Administrators are answerable to the court and to the dependents for their actions.

And the court does justice to all parties without fear or favour.”

13. Administrators are therefore not an authority or law on their own, but are subject to the powers and control of the appointing Court. Their main role is to ensure that the net estate of the deceased is ascertained and to apply for confirmation of the grant, distribute the estate and eventually wind up the administration.

14. In undertaking such responsibilities, the need for harmony between the administrator on one hand and the beneficiaries on the other hand cannot be over-emphasized. Since that harmony is lacking in this matter, I find that the administration of the estate is at stake and that calls for this Court’s intervention with a view to re-organize that administration.

15. In determining the way forward, this Court will attempt to strike a balance between the two parties herein. As to who an administrator(s) shall be, this Court is guided by **Section 66** of the Act which states as follows: -

“66. When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference-

a. surviving spouse or spouses, with or without association of other beneficiaries;

b. other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;

c. the Public Trustee; and

d. creditors:

Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.’

16. From the foregone analysis and by taking into account the circumstances in this case and in order to enable a fair and expedient determination of the main issues surrounding the estate herein, this Court now makes the following final orders: -

(a) The Grant of Letters of Administration made to the Petitioner, HENRY OMOLLO OBILA and the Certificate of Confirmation dated 20/11/1998 be and are hereby revoked forthwith.

(b) A new grant shall be issued in the joint names of HENRY OMOLLO OBILA, DANIEL ONYANGO OBILA and JOSEPH OTIENO OBILA.

(c) All and/or any of said Administrators shall apply for the confirmation of the Grant within 21 days of the issuance of the joint Grant and the same shall be served upon all the beneficiaries to the estate within 21 days of filing.

(d) As the matter involves close family members and is still pending in Court, each party shall bear its own costs.

Orders accordingly.

DELIVERED, DATED and SIGNED at MIGORI this 20th day of April 2017.

A. C. MRIMA

JUDGE