

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

SUCCESSION CAUSE NO. 632 OF 2011

JUDITH SARAH ADHIAMBO.....OBJECTOR/APPLICANT

VERSUS

JOSEPH OYOO MOMO.....PETITIONER/RESPONDENT

RULING

What is before me is the summons for revocation by Judith Sarah Adhiambo dated 27th September 2016. Judith Sarah Adhiambo – the applicant is admittedly the widow of the deceased. The asset in issue is LR Kisumu/Dago/96 which this Court vested in Joseph Oyoo Momo – the Respondent. The deceased died intestate.

Upon perusing the record and upon hearing the evidence of the parties it transpired that Joseph Oyoo Momo – the Respondent obtained letters of administration to this estate after citing the father of the deceased – one John Reru Sindeng – who did not petition for the same. That citation is dated 18th November 2011.

The Respondent's claim to this asset arises from an agreement for exchange of land which never materialized during the lifetime of the deceased. The Respondent produced evidence in this Court to demonstrate that he entered into an agreement with the deceased for exchange of his land parcel LR Kisumu/Dago/96 with that of the deceased LR Kisumu/Dago/392. They obtained consent of the LAND Control Board and he duly transferred his parcel to the deceased but they later disagreed and decided to revert to the former position. By the time the deceased died that had not materialized. He therefore petitioned, obtained a grant, had it confirmed and reverted the asset LR Kisumu/Dago/96 to his own name.

It is my finding however that the proceedings for obtaining the grant of Letters of Administration were defective. Once he cited the deceased's father the deceased's father informed him that he could not petition for the grant because his son, the deceased had a wife who was still alive. It would appear that the Reply to Citation filed by the deceased's father escaped the attention of the court. This is because whereas it was filed on 26th June 2012 the Court on 6th February 2013 ordered the father to petition within sixty days and gave the Respondent leave to petition in the event he did not do so. He duly petitioned but only with his name and that of the father of the deceased as beneficiaries. This despite being put on notice that the deceased wife was still alive though not living at the matrimonial home.

The omission to include the name of the applicant knowing very well of her existence is what renders the proceedings defective. Under Section 66 of the Law of Succession Act being the deceased's spouse she stands in priority to both the Respondent and her father in-law. The omission also amounted to concealment from the court of something material to the case. He also made an untrue allegation of a fact essential in point of law to justify the grant by stating in the petition that he and the deceased's father were the sole survivors of the deceased. In the premises I am satisfied that the applicant has laid sufficient basis for revocation of the grant. Her application is granted. The grant and the certificate of grant are hereby revoked and fresh letters of administration shall be issued to the applicant – who shall be required to move this court for confirmation within three months of this ruling. The respondent shall be at liberty to file a protest to the confirmation. The costs of these proceedings be in the cause. It is so ordered.

E. N. MAINA

JUDGE

29/6/2017

Ruling delivered in open court in absence of parties/Advocates who though duly notified have not attended. File returned to the registry.

E. N. MAINA

JUDGE

29/6/2017