



IN THE HIGH COURT OF KENYA

AT BUSIA

PROBATE & ADMINISTRATION NO. 61 OF 2008

IN THE ESTATE OF LUSIRO OKUMU.....DECEASED

BETWEEN

1. BONFACE SANDE LUSIRO

2. DOUGLAS ONYANGO.....PETITIONERS/RESPONDENTS

AND

MICHAEL PATRICK LUSIRO.....OBJECTOR /RESPONDENT

RULING

MICHAEL PATRICK LUSIRO, the objector herein filed an application dated 30th March 2016 for revocation and annulment of the grant dated 3rd February 2009 premised on the following grounds:

1. That the petitioners/ Respondents while filing the succession in respect of the deceased's estate had already subdivided the same among the beneficiaries and not according to the certificate of grant.
2. The respondents never sought the consent of the other beneficiaries in distributing the estate.
3. That the respondents are in the process of relocating the beneficiaries causing loss of property.

In his first ground, the objector is contending that the respondents were guilty of intermeddling with the property of a deceased person. This is contrary to section 45 of the Law of Succession Act. Conveniently he does not tell the court why he decided to keep mum until when he filed this application. This is what the section provides:

(1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.

(2) Any person who contravenes the provisions of this section shall—

(a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and

(b) be answerable to the rightful executor or administrator, to the extent of the assets with

which he has intermeddled after deducting any payments made in the due course of administration.

I have perused the affidavits of the witnesses for both parties and none of the beneficiaries has claimed that their consent was not sought during the exercise of distribution of the estate. What comes out very clearly is that the family was in agreement in the manner of distribution of the estate. They agreed to have the same distributed equally among the houses except one house which was inherited which got two acres of the estate of the deceased. This house has not complained.

The evidence on record has also indicated that the objector is a grandson of the deceased and that his claim in the estate was linked to that of his father, like all the other grand children. It is manifest therefore that the objector is solely driven by greed. That is why no member of the family supported his claim.

From the foregoing analysis of the evidence the objection must be dismissed with costs for want of merits.

DELIVERED and SIGNED at BUSIA this 22nd day of June, 2017

KIARIE WAWERU KIARIE

JUDGE