



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

SUCCESSION CAUSE NO. 1123 of 2015

**IN THE MATTER OF THE ESTATE OF AWITI AGOL alias AWITI NYAGOL ANDREWS
(DECEASED)**

SUSILIA ADONGO AWITI.....PETITIONER/RSPONDENT

VERSUS

MICHAEL OBUNGA NDEGE.....APPLICANT/ OBJECTOR

JUDGEMENT

Introduction

Awiti Agol alias Awiti Nyagol Andrews (Deceased) died sometimes in April 2009. The deceased was survived by Susilia Adongo Awiti (widow), Benard Sule Awiti (son), Mary Achieng Ongoro (daughter), Monicah Aluoch Awiti (daughter), Charles Otieno Awiti (son) and Henericus Odhiambo Awiti (son). Susilia Adongo Awiti (widow), applied for letters of administration which were issued in her favour on 14th March 2016. On 3.8.16, the objector filed summons to revoke the grant of letters of administration. The estate of the deceased comprises of:

1. Title number Kisumu/Kogony/1805
2. Title number Kisumu/Kogony/46
3. Title number Kisumu/Kogony/64
4. Title number Kisumu/Kogony/3693

Objector's objection relates to Land Title Number Kisumu/Kogony/3693 only.

Application

The application before the court is dated 2.8.16 and is a summons for revocation of the grant of letters of administration made under section 76 of the Law of Succession Act (Chapter 160 of the Laws of Kenya). The applicant seeks the following orders;

1. The letters of administration which were issued to the petitioner on 14th March 2016 be revoked
2. Costs be provided for

Objector/Applicant's Case

The application is supported by the applicant's affidavit sworn on 2nd August 2016. The objector told court that land parcel Kisumu/Kogony/55 which belonged to his late father Andrea Awiti Sawo Jackson alias Awiti Sao was subdivided into land parcels Kisumu/Kogony/3693 and Kisumu/Kogony/3694 and the latter was fraudulently transferred to Awiti Agol alias Awiti Nyagol Andrews (Deceased). In cross-examination by Mr Anyul advocate for the petitioner; he confirmed that his father was Ndege Obunga and not Andrea Awiti Sawo Jackson alias Awiti Sao.

DW2 Asman Abayo Sawo similarly confirmed that the objector's father was Ndege Obunga and not Andrea Awiti Sawo Jackson alias Awiti Sao but that objector settled on land that originally belonged to Andrea Awiti Sawo Jackson alias Awiti Sao.

Petitioner/Respondent's Case

The petitioner stated that land parcel Kisumu/Kogony/55 which belonged to her late husband Awiti Agol alias Awiti Nyagol Andrews (Deceased) was subdivided into land parcels Kisumu/Kogony/3693 and Kisumu/Kogony/3694 during his lifetime and Kisumu/Kogony/3693 remained in her husband's name. She told court that the objector was not deceased's relative and had no right to succeed him.

Determination

The matter before the court is an application for revocation of the grant which is governed by section 76 of the Law of Succession Act and which provides as follows;

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

(a) That the proceedings to obtain the grant were defective in substance;

(b) That the grant was obtained by the making of a false statement or by concealment of from the court of something material to the case

(c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;

(d) That the person to whom the grant was made has failed, after due notice and without reasonable cause either—

(i) To apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or

(ii) To proceed diligently with the administration of the estate; or

(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or

(e) That the grant has become useless and inoperative through subsequent circumstances

The issue for determination is whether the applicant's case falls within the provisions of section 76 of the Law of Succession Act.

I have considered the evidence on record and the green card for land parcel Kisumu/Kogony/55 (PEXH. 5) evidently shows that it was first registered in the name of Awiti Agol alias Awiti Nyagol Andrews (Deceased) and not Andrea Awiti Sawo Jackson alias Awiti Sao. The objector's allegation that the said land belonged to Andrea Awiti Sawo Jackson alias Awiti Sao lacks merit. There is evidence that Awiti

Agol alias Awiti Nyagol Andrews (Deceased) subdivided land parcel Kisumu/Kogony/55 into land parcels Kisumu/Kogony/3693 and Kisumu/Kogony/3694 during his lifetime and Kisumu/Kogony/3693 is still registered in his name.

Having said that, I find no evidence to support the objector's case that the grant of letters of administration was obtained by the making of a false statement or by concealment from the court of something material to the case.

Accordingly and from what is stated hereinabove, I find that the objection is misplaced and proceed to make order as follows:-

i. That the Objection filed by the objector herein on 2nd August 2016 be and is hereby dismissed.

ii. That a grant of letters of administration intestate to the estate of Awiti Agol alias Awiti Nyagol Andrews (Deceased) issued to Susilia Adongo Awiti (widow) on 14th March 2016 is legitimate

iii. That the Objector be and is hereby ordered to pay costs of this objection to the petitioner

DATED AND DELIVERED THIS 27th DAY OF July 2017

T. W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Felix

Petitioner - Mr Anyul

Objector - Mr Nyongo