



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT HOMA BAY**

**SUCCESSION CAUSE NO 320 OF 2014**

**IN THE MATTER OF THE ESTATE OF PETERLIS MUMA ODERA- (DECEASED)**

**LUCY AKEYO MUMA.....APPLICANT/OBJECTOR**

**VERSUS**

**JANE ATIENO.....RESPONDENT**

**RULING**

1. When **PETERLIS MUMA ODERA** (the deceased) died intestate on 01/05/2010 **WILLIAM OKELO OPIYO** petitioned for and on 03/07/2013 obtained grant of letters of administration to his estate vide **OYUGIS CMCC NO 13 OF 2013**. In the letter dated 23/11 2012 written by the Ag Chief of **KAMAGAK EAST** sub-location (one **BWAYA DISMAS OPINYA**) there was no description about petitioner's relationship to the deceased, but the letter stated that he would administer the estate on behalf of the other family members.

2. The beneficiaries were listed as two purchasers namely:-

**ANGELINE AUMA OPADO**

**EVERLINE ANYANGO**

The chief's letter had a footnote reading:-

“The deceased was single and had only one surviving married daughter-**LUCIA MUMA**”

3. The deceased was the registered owner of land parcel **No CENTRAL KASIPUL/KACHIENG 1286** and the same was eventually registered in the name of **WILLIAM OKELLO OPIYO**. When **LUCY AKEYO MUMA** (Plaintiff) eventually learnt about these developments, she applied for revocation of the grant saying that **WILLIAM OKELLO OPIYO** was not related to the deceased and was a total stranger to the estate. She lamented that the said **WILLIAM** had probably presumed that being she was a daughter disintitled her from inheriting her father's property thereby concealing from the court the true facts.

4. She has now urged this court to order revocation of the grant issued and also annul and revoke the title deed issued to the said **WILLIAM OKELLO OPIYO**, and directions be issued for rectification of the register to reflect the names of the original owner namely **PETERLIS MUMA ODERA** pending proper succession of the estate

5. The defendant filed no response and the matter proceeded ex-parte and was disposed of by way of written submissions where the plaintiff's counsel argued that the grant was fraudulently obtained and

without disclosure of material facts. I think the misrepresentation was well camouflaged by the Chief's letter which while acknowledging the existence of the plaintiff and her relationship with the deceased, carefully left out any description of the relationship the petitioner had with the deceased or even on whose authority the petitioner purported to represent the other family members.

6. From the records there is nothing to confirm that the plaintiff had been made aware about the cause or even the proposed mode of distribution. The petitioner concealed material information and deliberately ensured that the petitioner's daughter did not feature anywhere. This was fraudulent and falls within what is contemplated under section **76 (b) of the Law of Succession** which provides:-

***“A grant of representation, whether or not confirmed, may at any time be revoked or annulled... that the grant was obtained fraudulently by making a false statement or by concealment from the court of something material to the case”***

7. Consequently the application has merit and the grant issued at to **WILLIAM OKELO OPIYO** be and is hereby revoked.

b) The transfer of the parcel into his name was improper and is declared a nullity.

c) By a copy of this ruling the relevant Land Registrar is directed to cancel the entry made in the register in respect of Land parcel **No CENTRAL KASIPUL/KACHIEN'G 1286** registered on **10/07/2013** in the names of **WILLIAM OKELO OPIYO**, and the same do revert to the name of the earlier owner **PETERLIS MUMA ODERA**, pending prosecution of proper succession proceedings.

**Delivered and dated this 25<sup>th</sup> day of July, 2017 at Homa Bay**

**H.A.OMONDI**

**JUDGE**