



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**SUCCESSION CAUSE NO. 134 OF 2007**

**OWUOR MBEKE SILVANUS.....APPLICANT/ADMINISTRATOR**

**VERSUS**

**PETERLIS ALOO LIGULO.....OBJECTOR**

**AND**

**MARK ARODI MADUKU.....1ST PROPOSED INTERESTED PARTY**

**JOHN OKOTH NUNDA.....2ND PROPOSED INTERESTED PARTY**

**RULING**

These proceedings relate to the estate of Pitalis Olondo who died on 20th July 1995 domiciled in Border 1 sub-location, Awasi Location, Nyando District. Owuor Mbeke Silvanus (the Administrator) sought and obtained Letters of Administration into this estate and the Grant of Letters of Administration Intestate issued to him is dated 20th April 2007. The "Objector" has by the summons dated 6th April 2010 sought the revocation or Annulment of the grant. The summons brought under Section 76 of the Law of Succession Act and Rule 44(1) as read with Rule 26(1) of the Probate and Administration Rules is premised on the following grounds:-

***"a) The grant herein was obtained fraudulently;***

***b) The Respondent failed to disclose full material particulars and/or details relating to the estate of the deceased herein;***

***c) The Respondent failed to disclose to Court that the Objector/Applicant herein was a son of the deceased and hence entitled to the deceased's estate;***

***d) The respondent is not the rightful person in line to administer the estate of the deceased;***

***e) The deceased left behind the Objector/Applicant as the only surviving child and/or beneficiary and therefore the net intestate estate devolves upon the Objector/Applicant herein;***

***f) The Objector/Applicant is an adult but the respondent failed to obtain her consent before filing this Succession Cause;***

***g) If the orders sought are not granted, the objector/Applicant will suffer irreparable loss;***

***h) It is in the interest of justice that the application be allowed and orders sought be granted."***

These grounds are reiterated in the supporting affidavit sworn by the Objector on 31st March 2010.

In a replying affidavit sworn on 15th May 2010 the administrator deposes that the Objector is not a nephew of the deceased and that the Objector has no relation to the deceased who never married; that the Objector's identity card will bear his true details as to his home and ancestry; that the Objector is facing criminal charges for interfering with people's land; that the Objector does not rank anywhere in priority or at all in the deceased's beneficiaries and that the deceased never spoke of him.

As way back as 17th May 2010 directions were given that the matter would proceed by way of viva voce evidence which directions were renewed on 17th February 2012. The matter was however adjourned severally and it was not until 23rd July 2015 that the hearing commenced. The "Objector" testified that his great grandfather Owuor had two sons Mbeke and Ndiga and that Mbeke had 2 children both known as Pitalis: Mumbo and Owuor while Ndiga had only one child who is called Peterlis Aloo Ndiga and who is him. He however did an about turn and stated that his own father was Ligolo who was a son of Ndiga together with Pitalis Mumbo. He then stated that he could not remember how many children Mbeke had but later conceded that the Administrator was Mbeke's son. He stated that the administrator obtained the grant without seeking his consent yet he ranked higher in priority. He produced a letter from his area chief affirming that he was the rightful heir. He also accused the administrator of sub-dividing the land and alienating it to third parties even before confirmation of the grant.

To that end he produced a certificate of search, another letter from the chief, transfer of ownership form and another search evidencing the alienation (EXB 1, 2, 3(a) & (b) and 4). He contended that he had no other land where he could live. However in cross-examination he conceded that he has a home established with the help of the man who inherited his mother. He contended that he established that home long before the death of his mother. Once he concluded his testimony his advocate Mr. Rakewa who had intimated that he would call 2 witnesses applied for an adjournment to seek certain clarifications before he could call the next witness. The matter was adjourned but no further evidence was adduced and indeed neither the "Objector" nor Mr. Rakewa attended at the adjourned hearing. Mr. Yogo also intimated that he was not going to proceed and so the Court closed the case and called for submissions. The record shows that on 27th October 2015 the Deputy Registrar sent notices of the judgment date to the Advocates and notified them they could file submissions within 60 days but to date those of the "Objector" who so to speak is the applicant in the summons, have not been forthcoming. Those of the Administrator were received on 19th January 2016. Contrary to what is expressed in those submissions the Administrator did not testify or tender any documents at the hearing.

That notwithstanding this Court has considered the evidence of the "Objector"/applicant and the submissions on record. I have also perused the record. Section 76 of the Law of Succession Act provides the circumstances under which a grant whether confirmed or not can be revoked. It states as follows:-

***"76. A grant or 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 fraudulently by the making of a false statement or by the concealment 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 has ordered or allowed; 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 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."***

It is my finding that none of those grounds were proved in this case. The "Objector" conceded that the Administrator was also a relative of the deceased and whereas he claims to rank higher in priority to the administrator he was not able to prove this. He was very inconsistent when it came to his relationship with the deceased and in the end it was difficult to determine the exact relationship. The letter he produced as evidence of that kinship is but a copy of a document whose author ought to have been called as a witness given the nature of these proceedings. Given that the "Objector" fell short of proving that he ranks higher in priority to the administrator I find no good reason to revoke the grant. The Administrator is however by this ruling directed to apply for confirmation of the grant forthwith and in any case not later than six months of this ruling failing which it shall stand revoked under Section 76(d)(i) of the Law of Succession Act.

As it has also come to the attention of the Court that the Administrator has sold the land before confirmation of the grant. That is in breach of the proviso to Section 82(b) of the Law of Succession Act which provides:-

***"Provided that:***

***(i) .....***

***(ii) no immovable property shall be sold before confirmation of the grant."***

The alienation of the estate prior to the confirmation of the grant is illegal and unlawful and the titles arising therefrom must be canceled and the estate reverted to the name of the deceased.

The "Objector" will be at liberty to put in his claim at the confirmation stage.

It is so ordered.

**Signed, dated and delivered at Kisumu this 28th day of January 2016.**

**E. N. MAINA**

**JUDGE**

In the presence of:-

Miss Nabusubo for the Applicant/Objector

Mr. Rakewa for the Objector/Respondent