



REPUBLIC OF KENYA

IN THE HIGH COURT

AT HOMA BAY

SUCCESSION CAUSE NO. 11 OF 2015

(Formerly Oyugis CM's Succession Cause No. 122 of 2013)

IN THE MATTER OF THE ESTATE OF

GABRIEL ODIWUOR MINGEYI (DECEASED)

BETWEEN

CAROLINE ACHIENG ORON.....APPLICANT

AND

JOHN MINGEYI MINGEYI.....RESPONDENT

RULING

1. The application before the court is a summons for revocation of grant dated 16th January 2015. The applicant seeks to revoke the grant dated 28th January 2014 issued to the respondent in ***Oyugi's Chief Magistrates Court Succession Cause No. 122 of 2013***. The respondent is the father to Gabriel Odiwuor Mingeyi ("the deceased") who died on 11th January 2013. When the respondent applied for grant of letters of administration he stated that he was the only survivor of the deceased.
2. Caroline Achieng Oron applied for revocation of grant on the ground that the respondent had failed to disclose that she was legal wife of the deceased and that she was entitled to apply for the grant of letters of administration for the deceased's estate. The summons was supported by her affidavit sworn on 26th January 2015.
3. The respondent filed an affidavit sworn on 20th March 2015, in which he contended that the applicant was the deceased's first wife and that they cohabited together during the period from 2009 upto 2011 when she deserted the deceased. That the deceased then married another wife called Ruth Atieno and begot a child. He stated that Ruth Atieno left the matrimonial home with the child after the deceased's burial.
4. He further deponed that after the deceased's death he went to the deceased employer, the Kenya Army and was informed to apply for letters of administration for the estate of the deceased in order to obtain the deceased's death gratuity. He stated that he was willing to take care of the deceased's three children until they reached the age of majority.
5. It was not in dispute that the deceased and the applicant had two children together; Michael Kandege Odiwuor and Elvis Otieno Odiwuor. The 2nd wife had one child; Sheldon Ochieng' Odiwuor. There was a dispute as to where the children were residing and their conditions. I therefore directed the Children's Officer at Rachuonyo South Sub-County to investigate the conditions of the children and report to the court. A report to that effect was filed on 11th February 2016. The officer found that both children were residing with their mother and were living in less than ideal conditions. He found that both children were attending nursery school. He concluded that the applicant was a responsible person who was doing her best in the circumstances.
6. Under **section 76(b)** of the **Law of Succession Act (Chapter 160 of the Laws of Kenya)** the court may on application or on its own motion revoke a grant of representation on the ground that, *"the grant was obtained fraudulently by making a false statement or by the concealment from the court of something material to the case."* This case falls within the parameters of the law as it is alleged that the respondent failed to make material disclosures or conceal material facts.

7. Though the respondent contends that the applicant was not a wife, there is no doubt that she was his wife of the deceased and they had two children. Even if she was not his wife, the respondent did not disclose that the deceased had two children. The children of the deceased are the direct beneficiaries. This fact was not disclosed in petition hence I am inclined to revoke the grant issued in the respondent's favour. As to whether I should appoint her administrator, I find that that she is the one taking care of the children and it is in the best interests of the children that she continues to take care of them and administers the estate on their behalf.

8. As a matter of law where the property of the deceased is for the benefit of a child or children there must be a continuing trust under **section 58** of the **Law of Succession Act (Chapter 160 of the Laws of Kenya)**. The deceased benefits must therefore be held by more than one trustee. Thus I appoint the applicant and respondent to be administrators. It is my hope that they shall both act together in the best interests of the children.

9. From the report prepared by the Children's Officer, the children of the deceased continue to suffer as a result of their circumstances. I must therefore be guided by the provisions of **Article 53(2)** of the Constitution which are reinforced by the **Children Act (No. 8 of 2001)** and in particular **section 4** thereof, which provide that in all actions concerning children, the paramount consideration shall be the best interests of the child. I am also alive to the provision of **Article 159(2)** of the Constitution which requires me to dispense justice without undue regard to technicalities. In that regard and as the only property of the deceased is the death gratuity, I shall confirm the grant forthwith without further application to that effect.

10. The final orders are therefore as follows;

a. The grant issued to **JOHN MINGEYI MINGEYI** on 28th January 2014 in **Oyugis Chief Magistrates Court Succession Cause No. 122 of 2013** be and is hereby revoked.

b. A grant for the deceased estate is hereby issued to **CAROLINE ACHIENG ARON** and **JOHN MINGEYI MINGEYI**.

c. The grant is hereby confirmed on the basis that the gratuity shall be held in by the administrators in trust for **MICHAEL KENDEGE ODIWUOR, ELVIS OTIENO ODIWUOR** and **SHELDON OCHIENG ODIWUOR** and shall be used for their education and maintenance which shall include a reasonable sum of maintenance for the **CAROLINE ACHIENG ARON**.

DATED and DELIVERED at HOMA BAY this 15th day of February 2016.

D.S. MAJANJA

JUDGE

Ms Oron instructed by Siganga and Company Advocates for the applicant.

Mr Achilla instructed by Achillah T. O. & Company Advocates for the respondent.