



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
SUCCESSION CAUSE NO. 123 OF 2011
IN THE MATTER OF SILANGA OLE SENJA

MOSES OLE SENJA.....APPLICANT

VERSUS

WILLIAM OLE SENJA.....RESPONDENT

RULING

1. This ruling relates to an application dated 22nd July, 2015 brought by way of summons for *Revocation of Grant under Sections 48, 76 and 82 of the Law of Succession Act Cap 160 Laws of Kenya, Rules 44, 49, 59, 63 and 73 of Probate and Administration Rules.*
2. In the said application, the Applicant seeks orders as follows:
 1. Spent
 2. Pending the hearing and determination of the summons herein the honourable court be pleased to issue prohibitory order of injunction and/or conservatory order, restraining the respondent from alienating, selling or disposing the assets of SILANGA OLE SENJA more particularly *TRANSMARA/ENOOSAEN/93, 183 and 296* belonging to the estate of the deceased in any manner whatsoever.
 3. The grant of Letters of Administration granted to the respondent be revoked and/or annulled.
 4. The registrar in respect *TRANSMARA/ENOOSAEN/93* be rectified and the name of the respondent be deleted there from and same revert to the names of SILANGA OLE SENJA the deceased herein to facilitate fresh administration.
 5. Costs of the application be borne by the respondent.
 6. Such further orders be made as this Honourable Court may deem fit and expedient.
3. The application is supported by the affidavit of the applicant MOSES OLE SELENJA and the grounds on the body of the application in which the applicant in a nutshell states that the parcels of land that comprise the estate of the deceased to wit *TRANSMARA/ENOOSAEN/93, 133 and 296* ought to be inherited by the dependants of the deceased yet the respondent proceeded to apply for letters of grant without the notice and consent of all the 7 other beneficiaries. The applicant further contends that the respondent obtained the grant fraudulently by making false statements and/or concealing material facts from the court in that the respondent only disclosed one property of the deceased being LR NO. *TRANSMARA/ENOOSAEN/296* thereby leaving out two other parcels of land belonging to the deceased.
4. The applicant further claims that the respondent has moved on to acquire the deceased's parcels of land no. *TRANSMARA/ENOOSAEN/93* and had it registered in his name before the confirmation and to the exclusion of all the other beneficiaries.

5. It is for the above reasons that the applicant now seeks a revocation of the grant issued to the respondent while stating that the proceedings culminating to the issuance of the said grant was substantially defective, unlawful, illegal and otherwise void ab initio.
6. The applicant further claims that the respondent has intentions of disposing of the deceased's parcel of land to the detriment of the other beneficiaries and thus the need for a conservatory order to preserve the deceased's estate pending the outcome of the succession cause.
7. When the application came up for hearing on 11th December, 2015, Mr. Ochwangi appeared on behalf of Mr. Mbeche for the applicant while the respondent appeared in person.
8. The respondent did not file any affidavit or grounds of opposition in response to the application at hand despite being granted an opportunity to do so by the court thereby resulting in Mr. Ochwangi's submissions that the application be allowed as it was unopposed.
9. Instead of a formal reply to the application, the respondent filed a copy of a letter dated 2nd November, 2015 from himself to the court in which he attempts to explain the position regarding the properties belonging to the deceased's estate. I find that the letter does not amount to a formal response to the application as envisaged in the rules regarding reply to be filed in such instances and I will not consider its contents while determining this application.
10. I have however considered the applicant's instant application together with the annexures and the oral submissions made in court by Mr. Ochwangi for the applicant. I have also perused the court file and noted that this succession cause had proceeded to an advanced stage and was pending the confirmation of grant as at the time when the instant application was filed.
11. A perusal of the court record shows that at the time the respondent applied for grant he only listed **LR No. TRANSMARA/OLOLCHANI/296** in form P & A5 as the only asset of the deceased. It has however been revealed, through this application, that **LR NO. TRANSMARA/ENOOSAEN 183** also belongs to the deceased. Clearly therefore, there is evidence that the respondent concealed this vital information on the exact number of assets belonging to the deceased from the court.
12. On the ground that the consent of all the beneficiaries was not sought and obtained by the respondent prior to the application of grant and that the beneficiaries were not aware of the same, I note that a written and signed consent of all the beneficiaries dated 17th November, 2010 was filed on 17th March, 2011 with the application for grant. This written consent has not been disputed by the applicant as a forgery and I therefore find that this allegation of lack of consent of the beneficiaries has not been proved.
13. Lastly, the applicant has not shown that **LR. NO. TRANSMARA/ENOOSAEN/93** also forms part and parcel of the deceased's estate so as to enable this court make an appropriate order in respect to the said property. Section 76 of the Law of succession Act Cap 160 states 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 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 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.

14. In the instant case, I have already noted that the respondent concealed from the court, the actual information regarding all the assets of the deceased as one parcel of Land was left out. In this regard I find that the application for revocation of grant issued to the respondent on 13th July, 2011 is merited. Consequently I hereby revoke the said grant and in its place, issue a fresh grant in the names of the applicant and respondent herein. Each administrator/beneficiary is at liberty to file an application for confirmation of grant and their respective affidavits in respect to the distribution of the estate.

15. In order to preserve the estate of the deceased, I hereby issue an order of maintenance of the status quo on the land parcels belonging to the estate of the deceased pending the distribution of the estate to the beneficiaries.

16. For the reasons that the applicant did not demonstrate that **LR. NO. TRANSMARA/ENOOSAEN/93** belonged to the deceased's estate, I decline to make any orders in respect to prayer no. 4 of the instant application.

17. Bearing in mind the fact that this application involves members of the same family, I shall not make any orders on costs.

Dated, signed and delivered in open court this 19th day of April, 2016

HON. W. OKWANY

JUDGE

In the presence of:

Mr. Ochwangi for Mbeche for the Applicant

Respondent in person for the Respondent

Omwoyo court clerk