



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT HOMA BAY
SUCCESSION CAUSE NO.424 OF 2014

(Formerly Oyugis PM's Court Succession Cause No.233 of 213)

LAZARO OBUNGU OSANO..... DECEASED

AND

GEORGE MANYALA OBUNGU..... OBJECTOR

VERSUS

DANIEL NYAWARA OBUNGU PETITIONER

RULING

1. **GEORGE MANYALA OBUNGU** (the Objector) filed an objection to making of grant under **Rule 17(1)** of the **Probate and Administration Rules**, stating that the grant issued to Petitioner **DANIEL NYAWARA OBUNGU** be revoked and the court directs that a fresh succession cause be filed in respect of the Estate of **LAZARO OBUNGU OSANO** (the deceased).
2. The deceased had two wives namely **ROSELIDA NGICHO OBUNGU** (1st wife) now deceased, and **BELDINA AOKO OBUNGU** and between the threesome, were a total of 8 sons and an undisclosed number of daughters. The objector (**GEORGE**) is the son of the first wife, whilst the Petitioner/Respondent (**DANIEL**) is the 2nd wife's son.
3. On 21st January 1978, **LAZARO OBUNGU OSANO** died while domiciled in **KAMENYA** Sub Location, South Kanyaluo Location in Rachuonyo District. Thereafter the Petitioner/Respondent moved to **OYUGIS LAW COURTS** and filed Succession Cause No.233 of 2013 seeking to be the administrator of the estate of **LAZARO OBUNGU OSANO**, without consulting any of the other family members. He stated that the deceased's estate is worth Kshs.100, 000/= posing as the only surviving son of the deceased.
4. At the hearing, the objector told this court that the 1st wife had six children, and the 2nd wife (the Petitioner's mother) also had six children. The objector is the 1st wife's only surviving child, whilst the 2nd wife has four living issues (which includes the Respondent).
5. The objector also pointed out that the Respondent did not obtain a letter from their area chief to confirm the deceased's beneficiaries, and he entered his mother's (**BELDINA**) name as one of his sureties, yet she has a mental problem. The objector also explained that although all the children from his mother's house passed away, they are survived by off-springs who are likely to be disinherited by the Respondent's actions.

6. The objector's witness JOHN OUNDA N. AOL (PW2) is the retired chief of South Kanyaluo Location and he knew the late LAZARO OBUNGU OSANO very well. He confirmed that the Objector is last born son of the 1st wife while the Respondent is the last born son of the 2nd wife. He also confirmed that the 2nd wife has three other sons; and the first wife also had three sons. He explained that when the Respondent filed Succession Cause No.233 of 2013 at Oyugis, the latter approached him and requested him to write a letter saying he was the sole beneficiary of the estate. He declined and advised the Respondent to sit with his elder brothers and agree then get back to him. The Respondent refused and reported to the court at Oyugis that PW2 was being unco-operative.

7. PW2 was summoned to court and he explained what was going on and the court directed him to identify all the beneficiaries – which he did but told Respondent he could only write the letter on condition that the other beneficiaries were included.

8. This evidence was confirmed by Pastor GEORGE OKELLO MIKO (PW3), a grandson to LAZARO – (his father being the deceased's 1st born child) named ROBERT OWINO OBUNGU. BOAZ ORIGA OSANO (PW4) a nephew to the deceased (being a son of the deceased's brother named JOHN ORIGA OSANO, also confirmed that the deceased had two wives and that the Objector is indeed a son of the deceased and stated:-

“If Daniel presented himself as the only surviving child of Lazaro he lied because Daniel has other brothers and even they were not aware of the grant.”

9. The Petitioner's testimony was that his brothers from the 1st house were plotting to kill him, and they do not even step in his mother's homestead.

10. From his response in cross examination by Miss Mimba (who is on record for the Objector), the Respondent confirmed that his father had two wives, and that he indeed filed the succession cause without consulting his surviving siblings. He claims to have informed the court at Oyugis that his father had 2 wives and children, but the magistrate ignored him. He pleaded ignorance saying he did not know that before his late father's estate could be distributed fairly he was required to consult the family and equipped.

“Now that you have explained to me, I will agree to revocation on condition that we are summoned to come to court.”

11. There is no dispute that the deceased had more than one wife and child, and that he is infact survived by other beneficiaries other than the Respondent and his mother.

12. Indeed the Chief of Kanyaluo South Location had written a letter dated 17/03/2014 confirming that position. The other two witnesses also confirmed that Respondent is not the sole surviving beneficiary.

13. Upon a perusal of the documents the Respondent relied on in Succession Cause No.233 of 2013 Form P&A5, which is an affidavit in support of petition of the letters of administration intestate shows that the Respondent presented himself as the only survivor of the deceased.

14. It is not clear to me how he was able to obtain the grant without the chief's letter, or whether the letter dated 17/03/2014 was presented to the court which issued the grant.

15. Whatever the case, the Respondent out rightly misrepresented facts to the court as being the sole survivor whereas he has surviving brothers and other beneficiaries. Further he obtained grant without even consulting the other family members who have demonstrated a spirited interest in the deceased's estate.

16. Consequently the grant issued cannot hold and must be cancelled to allow the family nominate appropriate members to apply to be administrators of the estate.

17. The grant issued to DANIEL NYAWARA OBUNGU be and is hereby revoked. A fresh application shall be made by the surviving beneficiaries after due consultation by members of the 1st and 2nd house.

18. Costs shall be borne by the Respondent.

Delivered and dated this 28th day of **July, 2016** at Homa Bay.

H.A. OMONDI

JUDGE