



REPUBLIC OF KENYA

IN THE HIGH COURT AT HOMA BAY

SUCCESSION CAUSE NO. 765 OF 2014

Formerly Homa Bay Succession No. 90 of 2000

IN THE MATTER OF THE ESTATE OF

**PIUS OLOO OYOMO (DECEASED)**

**BETWEEN**

**HENRY OMOLO ODEKO .....APPLICANT**

**AND**

**PETER OUMA OMOLLO ..... PETITIONER/RESPONDENT**

**RULING**

1. This is the second summons for revocation of grant filed by **HENRY OMOLOODEKO**. The first summons, filed in *Kisii HC Misc. Succession Application No. 30 of 2012*, was struck out on by Sitati J., on the ground that there was insufficient information to show that the grant was confirmed as such she was of the view that the application was filed prematurely.
2. The applicant has now moved the court by the summons for revocation dated 20<sup>th</sup> December 2014. The grounds on the face of the summons is that the proceedings to obtain the grant were defective, that the grant was obtained by making a false statement and that the grant was made by making an untrue allegation of fact.
3. At the hearing of the application I heard both the petitioner and applicant and what emerges from their testimonies is that the **PIUS OLOO OYOMO** (“the deceased”) was a brother to the applicant and the applicant is the father to the petitioner. In addition to the testimony, I the file for *Homa Bay SRM Succession Cause No. 90 of 2000* and it shows that Peter Ouma Oloo filed the petition wherein he stated that he was the only surviving relative of the deceased. He did not disclose that his father, who is a brother of the deceased, was alive.
4. Under **section 66** of the *Law of Succession Act (Chapter 160 of the Laws of Kenya)*, in the absence of a surviving spouse, the person to be given priority in making the grant as beneficiaries entitled on intestacy under **Part V** of the *Act*. Under **section 39** of the *Act* where an intestate is left with no surviving spouse or children then in the absence of the father or mother, the brother and sisters of the deceased have priority. In this case the petitioner is a son of the living brother of the deceased. His father ranks in priority and it is him who is entitled to the grant.
5. In terms of **section 76(b)** of the *Act*, the failure to make such a disclosure is a material concealment that entitles the court to revoke the grant either on application of a party or on its own motion.
6. I therefore revoke the certificate of confirmation issued to **PETER OUMA OMOLLO** on 10<sup>th</sup> April 2000 and the grant of letters of administration dated 5<sup>th</sup> March 2001 to him.
7. A grant of letters of administration shall accordingly issue to **HENRY OMOLO ODEKO**.

8. If Peter Ouma Omollo has any claim on the property, it must await confirmation of grant.

**DATED and DELIVERED at HOMA BAY this 20<sup>th</sup> day of March 2015.**

**D.S. MAJANJA**

**JUDGE**