



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

HC SUCC CAUSE NO. 542 OF 2011

JAMES OOKO ODOK.....APPELLANT/APPLICANT

VERSUS

GEORGE OWINO ODHIAMBORESPONDENT

JUDGMENT

By the summons dated 3rd October, 2011 James Ooko Odok described as the interested party/Applicant sought the revocation of the letter of Administration issued to George Owino Odhiambo- the Respondent- by the Siaya court in the estate of Walome Ooko(deceased)

The grounds for the summons were that the proceedings to obtain the letters of administration were defective in substance and that the grant was obtained fraudulently by making a false statement or by the concealment from court of something material to the case.

In the supporting affidavit it is deposed that the Respondent s a son of the brother of the deceased and that the applicant is the grandson of the deceased being a son to Antony Odok Walome. The applicant also deposes that his father died when he was 4 years old and that he was left under the care of his grandmother one Margaret Olendo who died in July, 1993; That the Respondent did not disclose all this to the court when he obtained the letter of administration. He deposes further that the respondent is in the process of disposing the land and that all the efforts to resolve the dispute through their area chief have failed as the respondent does not heed to his summons.

The respondent filed a replying affidavit in which he disputes that he acted fraudulently in the succession proceedings and deposes that the land the subject of the proceedings was gifted to him by Margaret Olendo Walome after the death of her husband Walome who was his uncle (a brother to his father). He also deposes that whereas Margaret Olendo Walome and Walome had a son called Anton Odok the said son died childless and that his wife Alice divorced him in 1985 and never returned. He further deposes that the applicant is a stranger who is not related to Margaret Olendo Walome in any way and only appeared in the village in 2009 and started laying claim to the land LR Uholo/Ugenya/274. He urges this court to dismiss the summons stating that Margaret Olendo Walome and even Anton Odok never in their life time mentioned the existence of the applicant.

The respondent`s advocate further filed grounds of opposition on 19/1/2014.

On 23/1/2014 Muchelule-J gave directions that the summons be canvassed through oral evidence. The

applicant was deemed to be the plaintiff and the Respondent/defendant. Parties were given leave to file further affidavits.

The matter was fixed for hearing severally but it could not proceed for one reason or the other but on 21st January, 2015 the applicant turned plaintiff was ready to proceed. The respondent/defendant and his advocate were not present and the date being under the impression that the date had been fixed in the presence of counsel for the Respondent/defendant proceeded to hear the matter *ex parte*. I have now confirmed from the record that Mr. Nyawiri the advocate for the Respondent/defendant was not present when the hearing date was taken. He was also not served with a hearing notice and it would be unjust to condemn his client unheard. It is for this reason that I hereby invoke the powers vested in me under rule 73 of the probate and Administration Rules to set aside the proceedings taken on 21/1/2015 and order that the matter be heard afresh. A fresh date for the hearing be taken either in court or in the registry. There shall be no order for costs.

E.N. MAINA

JUDGE

Signed, dated and delivered in Kisumu this 19th day of March, 2015

In the presence of

Mr. Onyango for the Applicant

No appearance of for Respondent

Court clerk Moses Okumu

Mr. Onyango: We can take a date here.

Court: The summons for revocation be heard on 14/5/2015 to secure hearing Notice.

E.N. MAINA

JUDGE

19/3/2015

ENM/aar