



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BUSIA**

**SUCCESSION P & A CAUSE NO. 22 OF 2006**

**IN THE MATTER OF THE ESTATE OF BENARD ODONGO ONYIPATA (DECEASED)**

**GEOFREY ODONGO.....PETITIONER**

**VERSUS**

**WILLIAM ONYIPAT ODONGO.....OBJECTOR**

**R U L I N G**

1. This Court is asked to determine the Summons for Revocation or Annulment of Grant dated 28<sup>th</sup> November 2011 in which the Applicant herein also referred to as the Objector seeks the following prayers:-

- a. **That the Grant of Letters of Administration Intestate issued herein on 14/6/2011 to GEOFREY ODONGO be revoked and or annulled.**
- b. **That a fresh Grant of letters of Administration intestate be issued to William Onyipata Odongo.**
- c. **That cost be provided for.**

2. The Protagonists are not agreed as to the name of the Deceased. The Objector holds the position that the Deceased name is Ondongo Nyapata Obukuleme while the Petitioner avers that in his lifetime the Deceased acquired the name "Bernard" after he was baptized in 1982. Nothing much turns on this because there is agreement that the cause is in respect to the registered proprietor of the land parcel known as BUKHAYO/LUPIDA/1631. According to the official search that registered proprietor is Odongo Nyapati Obukuleme (hereinafter called the Deceased). It is acknowledged by both sides that this man is the Biological father of both the Petitioner and Objector albeit from different mothers.

3. It is accepted by both sides that in his lifetime the Deceased was married to two wives namely Rofina and Paslisa. Paslisa had six sons namely:-

- a. William Onyipat Odongo (The Objector)
- b. Zakayo Masika Odongo
- c. Joseph Okitoi Odongo
- d. Onesmas Geoffrey Odongo
- e. Elias Okiring Odongo
- f. Erick Okiru Odongo

According to the Objector, Rofina had four surviving children with the Deceased, namely:-

- a. Geoffrey Ijaka ( the Petitioner)
- b. Peter Ekesa
- c. Regina
- d. Beatrice

In his oral testimony, however, the Petitioner told Court that Peter, Regina and Beatrice were the children of Rofina from a previous marriage with one Ejakait. As will be soon apparent, at least for purposes of the matter at hand, this allegation by the Petitioner matters not.

4. There is therefore acknowledgment by the Petitioner that apart from his mother Rofina, the Deceased was married to Paslisa who had six sons, the Objector being one of them. In the Petition presented to Court on 23<sup>rd</sup> February 2000 by the Petitioner he makes no mention of the members of the house of Paslisa. What explanation, if any, does he make for that glaring omission?

5. The Petitioner's contention is that the Deceased inherited Rofina from his brother Ejakait. That because of this, during the land adjudication process, the Deceased was duly registered as the owner of BUKHAYO/LUPIDA/174. That land was sub-divided into two land parcels namely BUKHAYO/LUPIDA/1631 and BUKHAYO/LUPIDA 1632. The Deceased sold plot No. 1632 and remained with plot 1631. That although registered as proprietor of plot No. 1631, the Deceased was really a trustee of that land for and on behalf of the children of Ejakait. These children are said to be Regina, Beatrice and Peter. Of course the Objector disagrees.

6. The position also taken by the Petitioner is that in addition to BUKHAYO / LUPIDA / 1631, the Deceased owned BUKHAYO / LUPIDA / 915. That prior to his death, the Deceased gave this parcel of land to Paslisa and her children. In effect that the house of Paslisa is already adequately provided for. The point the Petitioner must be making is that, if these previous benefits are brought into account, the house of Paslisa does not deserve any share in BUKHAYO / LUPIDA /1631 (Section 42 of The Law of Succession Act).

7. The basis of the Summons for Revocation is threefold:-

1. **That the Applicant obtained the grant fraudulently by making of a false statement or by concealment from Court of something relevant to the cause.**
2. **The Applicant left out rightful heirs of the estate.**
3. **The Petitioner did not seek authority of the other heirs before filing the Petition.**

8. This Court has found for a fact that the house of Paslisa was excluded from these proceedings without their authority or consent. Paslisa and her children are dependents of the Deceased within the meaning of section 29 of the Law of Succession Act. The Petitioner needed to seek their consent before taking out this cause alone. The Petitioner needed to make a full disclosure of all the dependents of the Deceased. Section 51(2) of the Law of Succession Act requires an Application for Grant of Representation to include certain information. Section 51(2) reads:-

**“An application shall include information as to –**

- a. ....
- b. ....
- c. ....
- d. ....
- e. ....
- f. ....
- g. **in cases of total or partial intestacy, the names and addresses of all surviving spouses, children, parents, brothers and sisters of the deceased, and of the children of any child of his or hers then deceased;**
- h. ....
- i. ....

That provision is reinforced by Rule 7(1) e of the Probate and Administration Rules. Statute places a mandatory obligation on the Petitioner to make a full disclosure of all persons referred to in section 51 (2) g. The Petitioner was obliged to disclose all the members of the house of Paslisa even if he thought that they were undeserving of land parcel Bukhayo/Lupida/1631. The Law does not give the Petitioner an option. In the family of Paslisa were persons entitled to the estate of the Deceased in the same degree as or even in priority to the Petitioner. Although the Petitioner says that the members of this family were uncooperative when he commenced these proceedings there is no evidence that he sought their consent or indeed even gave them notice of his intention to apply as is required by Rule 26(1) of the Probate and Administration Rules. For those reasons I reach a decision that the Petitioner acted fraudulently by making false statements and by concealing from court facts material to the cause. The lone ranger attitude of the Petitioner makes him a person unsuitable to hold the role of an Administrator. It is for this reason that I allow the Application of 28<sup>th</sup> November 2011 in its entirety. The new Administrator shall move the Court for Confirmation within 30 days hereof. Any person who is beneficially entitled to the estate (including the Petitioner herein) and who will be unhappy with the mode of distribution proposed by the Administrator is at liberty to file a protest to the distribution.

9 Costs to the Objector.

**DATED, SIGNED AND DELIVERED AT BUSIA THIS 22<sup>ND</sup> DAY OF APRIL, 2015**

**F. TUIYOTT**

**J U D G E**

**IN THE PRESENCE OF:**

**KADENYI.....COURT CLERK**

**.....FOR THE PETITIONER**

**.....FOR THE OBJECTOR**