



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

SUCCESSION NO.552 OF 2011

IN THE MATTER OF THE ESTATES OF: CAMLUS ONYIMBO OKECH

AND

IN THE MATTER OF AN APPLICATION BY:

MARGARET JUMA

SARAH ACHIENG-OBJECTORS

JOYCE AJWANG

AND

GABRIEL OLUOCH MENYAPETITIONER/RESPONDENT

R U L I N G

The application dated 26.11.14 by the Objectors/applicant pray for an order that the grant issued herein to the petitioner be annulled or revoked. The applicant states that the grant was issued on 10/1/94, but that was erroneous as no such grant exist. Instead the grant in question was issued on 25/2/13 and confirmed on 22/10/13.

The application is supported by the applicants affidavit jointly sworn on 26/11/2014. They argue that the deceased was their husband who left them together with several children. They have attached some land dispute proceedings of 5/12/96 which shows the suit land having been determined in favour of the deceased against the petitioner's family.

The petitioner did file a reply vide the affidavit sworn on 10/2/15 in which he gave a narration of how he filed some citation proceedings which led him eventually be granted the grant and later confirmed.

I have perused the application together with the attendant submissions by the counsels. From the history of the matter it appears that there was no dispute that the deceased all along has been the registered proprietor of land parcel No. EAST UGENYA.KATHIENO 'B'/94. The respondent on the other hand does not dispute that the applicants/objectors are the deceased's widows. His only claim is that his father Menya Yogo Owera has been staying in the suit properly as far back as 1960.

The other interesting dimension is that the applicants did filed succession cause No.6/2011 at Ukwala and actually obtained grant on 18/8/2011. The same was however not confirmed.

The plain understanding of the entire proceedings by the respondent in the proceedings is that he was well aware of the existence of the applicants/objectors herein. At least at the point of confirmation of the grant he ought to have informed them. Further I find that there is need for the respondent to prove his true claim on the suit property probably by adduction of further evidence.

In the premise I do allow the application herein by revoking the grant issued on 25/2/13 and confirmed on 22/10/13 on the grounds that the respondent failed to conceal material facts. The consequences arising from the said confirmed grant are hereby annulled too. The grant issued by the Ukwala Court on 18/8/11 is revoked and the attendant file No.6/11 transferred to this court formally. Each party shall bear their respective costs.

DATED ANDEDELIVERED AT KISUMU THIS 14TH DAY OF MAY 2015

H. K. CHEMITEI

J U D G E

IN THE PRESENCE

.....**COUNSEL FOR OBJECTOR**

.....**COUSNEL FOR RESPONDENT**