



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

SUCCESSION CAUSE NO. 519 OF 2011

IN THE MATTER OF THE ESTATE OF:

JAMES WAGUDE OKECH DECEASED

AND

IN THE MATTER OF AN APPLICATION BY:

- 1. YUANITA AKICH WAGUDE**
- 2. GEORGE ODHIAMBO WAGUDE APPLICANT**

AND

IN THE MATTER OF AN APPLICATION FOR ANNULMENT BY:-

JOHN OMALA WAGUDE APPLICANT

J U D G M E N T

The Grant of Letters of Administration were in this cause issued to Yuanita Akich Wagude, widow of the deceased and her son George Odhiambo Wagude. On 25th January 2013 the grant was confirmed and Yuanita Akich Wagude was named as beneficiary to inherit LR. Kisumu/Kadero Got Nyabondo/894 and George Odhiambo Wagude LR. Kisumu/Kadero Got Nyabondo/889. A certificate of confirmation of grant was duly signed and issued to that effect. However on 11th April 2013 John Omala Wagude filed a summons for revocation of the grant on the ground that he too was a real son of the deceased and that the administrators had colluded to deprive him of his inheritance. He contended that his signature had been forged to indicate that he had consented to the distribution of the estate.

The summons was canvassed through viva voce evidence. It is not disputed that the applicant is a son of the deceased. Indeed Yuanita Akich Wagude admitted that his mother was her co-wife and that he is the only survivor in his mother's house. She however denied that she had refused to apportion a share of the estate to him and contended that he sued her before she could do that. She also contended that under Luo Customary law she would be entitled to the whole of the land on which she resides and the other parcel of land would then be distributed among all the beneficiaries. Her son, the co-administrator, testified that their homestead occupies No. 894 and 899 is the parcel away from the homestead. He contended that they followed all necessary procedures in obtaining the grant and that all the beneficiaries consented. He contended that they intended to distribute the 2 parcels of land equally amongst all the five beneficiaries including the applicant. He denied that they forged his signature.

This Court gave the parties time to settle the dispute between them amicably but they were unable to agree.

Section 76 of the Law of Succession Act sets out the circumstances under which a grant whether or not confirmed can be revoked or annulled. It will be noted that the summons does not indicate the grounds for the application. However at paragraph 5 of the affidavit in support the applicant deposes that his signature was forged to indicate that he consented to the mode of distribution. That would of course bring this grant under the ambit of section 76(b) of the Law of Succession Act as the grant would have been obtained fraudulently.

However when that signature was put to him at the hearing of the summons the applicant admitted it was his. Nevertheless I am persuaded that there is good cause to interfere with this grant. It is clear from the manner of distribution that the two administrators were intent on disinheriting the applicant. Whereas Yuanita Wagude asserts that under her custom she would be entitled to the land where she resides and then the other parcel is shared equally between the beneficiaries that is not how she sought to distribute the estate. She took one parcel to her son leaving the deceased's first house without inheritance.

The provision to section 71(1) of the Law of Succession Act requires that the respective identities and shares of all persons beneficially entitled be identified. It states as follows:

"Provided that, in cases of intestacy, the grant of letters of administration shall not be confirmed until the Court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed the grant shall specify all such persons and their respective shares."

That was not done for all the beneficiaries in this case. As the deceased died intestate and was polygamous the distribution of his estate is subject to Section 40 (1) of the Act. Accordingly it is my finding that Kisumu/Kadero Got Nyabondo/889 should go to the applicant while George Odhiambo Wagude shall get a share in Kisumu/Kadero Got Nyabondo/894 together with his mother and co-administrator Yuanita Akich Wagude. This being a family matter each party shall bear his/her own costs. It is so ordered.

Signed, dated and delivered at Kisumu this 25th day of June, 2015

E. N. MAINA

JUDGE

In the presence of:-

Yuanita Akich Wagude

George Odhiambo Wagude

John Omala Wagude