

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MSC. APPLICATION NO.195 OF 2014

**IN THE MATTER OF THE ESTATE OF: OCHIENG OFIRO alias OCHIENG OWIRO –
DECEASED**

AND

IN THE MATTER OF REVOCATION OF A GRANT OF LETTERS OF ADMINISTRATION

BETWEEN

MICHAEL JUMA OBONYO.....OBJECTOR/APPLICANT

AND

MARY ADHIAMBO ONYANGO.....PETITIONER/RESPONDENT

R U L I N G

1. The application dated 19.12.14 prays for revocation of grant issued to **MARY ADHIAMBO ONYANGO** on 11.7.11 and confirmed on 14.2.12 by the Principal Magistrate at Siaya vide Succession Cause No.37 of 2011. The application is based on the affidavit of the applicant dated 19.12.14. The applicant argued that he is the grandson of the deceased and that the respondent proceeded with the cause without notifying him. He further argued that the value of the land namely **UHOLO/MADUNGU/741**, the subject matter of dispute herein was way beyond the monetary jurisdiction of the court.
2. The respondent vide a replying affidavit sworn on 26.2.15 has opposed the application arguing that she was deceased's daughter and thus had the right of applying for letters of administration. She states that the trial court had jurisdiction to entertain the cause.
3. I have perused the application together with the rival affidavits and their annexures. From the facts therein it appears that the deceased had two daughters namely the respondent and the late **CONSLATA ALOO OBONYO**. The latter is the applicant's mother. It also appear that when the grant was confirmed the respondent did share the suit land into two portions namely 50% to herself and the balance of 50% to one **MICHAEL OUMA ODUOR** who was to hold it in trust for the household of her mother. I believe that the said **MICHAEL OUMA ODUOR** is a brother to the applicant herein.
4. A further affidavit of the applicant sworn on 4.5.15 showed that there has been a further sub-division of the suit parcel of land after the grant was confirmed and the said parcel is now christened **UHOLO/MADUNGU/1506** and **1507** and registered in the names of **CAMILUS OSUNDO AHUYA** on the one hand and **MARY ADHIAMBO ONYANGO** and **MICHAEL OUMA** on the other hand respectively.
5. The question now is whether on the strength of the facts herein, should this court interfere with the grant as issued by the learned magistrate? I find that the applicant's rights being that of a grandson comes after those of her deceased mother **CONSOLATA** which was well granted by the court. Her mother was given 50% of the land albeit under the names of his brother who was to hold it in trust for himself and by extension the applicant. I find therefore that the applicant should agitate his claim from **MICHAEL OUMA ODUOR**. If the respondent has meddled with the portion due to the household of

CONSOLATA then the applicant together with her siblings have every right of demanding it back. For now I do not think it is worth interfering with the findings of the lower court since the applicant's portion is very secure.

6. Before concluding this matter, my attention is drawn to an official green card which shows that on 30.11.09 **MICHAEL JUMA OBONYO** and **BENSON OBONYO OMBOGO** had themselves registered as proprietors of the suit parcel of land. Obviously this happened before the grant was confirmed. The parties seemed not to have raised any issues during the transmission of the land. If this is true nevertheless the same was void abinito

7. The application is otherwise disallowed with no orders as to costs. For proper administration of this file the same is hereby transferred to Siaya High Court.

Dated, signed and dated this 28th day of October 2015.

H. K. CHEMITEI

J U D G E