



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

PROBATE & ADMINISTRATION CAUSE NO. 135B OF 2007

EDWARD ESIKEDI OLING'AMONG1ST OBJECTOR/APPLICANT

JACKTONE ASHIEMBI OBANDA2ND OBJECTOR/APPLICANT

VERSUS

JONATHAN SIKUTATUADMINISTRATOR/RESPONDENT

ALICE IMELA MAKOKHAADMINISTRATOR/RESPONDENT

R U L I N G

1. In a summons dated 12th August 2010, the Applicants seek the following orders:

“1. THAT this Honourable Court be pleased to order the transfer of Kisumu HCSC No.395 of 2008 to Busia High Court and be consolidated with Busia HCSC No.135B of 2007 relating to the estate of the late IDWARE ESIKEDI (deceased).

2. THAT the grant of letters of administration intestate issued jointly to the named JONATHAN SIKUTATU ESKEDI and ALICE EMELA MAKOKHA by this Honourable court in this case on the 31st of October 2007 and the subsequent certificate of confirmation dated the 4th day of November 2008, be revoked and/or annulled.

3. THAT this court be pleased to issue an order of rectification with respect to the grant issued to EDWARA ESIKEDI OLING'AMONG' vide Kisumu HCSC No.395 of 2008 and the same to include JACKTON ASHIEMBI OBANDA, a beneficial purchaser of the estate of the late deceased person as a joint administrator thereof.

4. THAT this court be pleased to issue any other orders as it may deem fit to issue in the circumstances and in the interest of justice.

5. THAT the costs of this application be provided for.”

2. At this state I propose to deal only with prayer (1) and the reason will be soon apparent. Idwara Esikedi (the deceased) died intestate on 25th October 2006. The Petitioners herein commenced this Petition for Letters of Administration intestate on 23rd July 2007. They obtained Grant of the Letters on 31st October 2007 and which Grant was subsequently confirmed on 4th November 2008.

3. For some reason, perhaps ill-advised, the 1st objectors herein commenced a parallel Petition to the same estate at the High Court in Kisumu vide – succession cause No.H.C.395 of 2008. In that cause, the 1st Objector was granted Letters of Administration intestate on 29/08/2008. It would seem that the same are yet to be confirmed. It is now the wish of the 1st Objector that the Kisumu file be transferred and consolidated with these proceedings so that the summons for revocation can be heard and determined.
4. It is most undesirable, in fact unlawful, that two separate Petitions should be filed in respect to the estate of one deceased person. In this instance the deceased died at Busia District Hospital and while a resident of Ochude sub location within the said County. His only property is South Teso/Angoromo/5771 which is situated within the said County. There is no reason why a Petition to his estate should have been filed anywhere else other than in the High Court at Busia. Due to the ill-advised step taken by the 1st Objector, there are now 2 grants of administration to the deceased estate made to two different people. This should not be left to stand.
5. The 1st Objector may have now realized the futility of his action and seeks the transfer of his cause from Kisumu to Busia so that the two matters are dealt with together. That seems to make sense but the application for transfer of the Kisumu cause ought to be made before the Judge at Kisumu. For that reason I am unable to grant order 1 on this application. Let the objector move the Probate and Administration Court at Kisumu.

I make no order on costs.

F. TUIYOTT

J U D G E

DATED, SIGNED AND DELIVERED AT BUSIA THIS 23RD DAY OF JANUARY 2014.

IN THE PRESENCE OF:

.....**FOR 1ST OBJECTOR/APPLICANT**

.....**FOR 2ND OBJECTOR/APPLICANT**

.....**FOR ADMINISTRATOR/RESPONDENT**