



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
PROBATE AND ADMINISTRATION SUCCESSION
CAUSE NO.273 OF 2012

OPAMA EMASE JUVENALIS.....OBJECTOR

VERSUS

ELIZABETH BARASA

FLORENCE SIKUTATU OBARASAPETITIONERS/RESPONDENTS

R U L I N G

1. This ruling determines an Objection to the making of Grant to the Estate of Silvester Opiyo Obara (the Deceased) in favour of the Petitioners. The objection dated 7th August 2012 is brought under Rule 17(1) of The Probate and Administration Rules.
2. In support of the objection, the Objector swore an affidavit on 7th August 2012. In it that Objector claims that he bought ½ acre in land parcel South Teso/Angoromo/7322 from the deceased vide a written sale. Attached to that affidavit is a copy of the said sale agreement which shows the consideration to be ksh.30,000/=. It is the complaint of the Objector that the Petitioners have failed to include him as a beneficiary notwithstanding that they are fully aware of the said sale.
3. The Petitioners responded by filing two separate affidavits on 14th September 2012. The substantive contents of the two affidavits are similar, word for word. Basically, the Petitioners position is that the sale agreement is a forgery. And that, even if it were genuine the same is null and void. In the course of the hearing Counsel for the Petitioners explained that the invalidity was because the transaction was not consented to as required by the Land Control Act (Cap 302). It was argued that the only remedy available to the Objector was a refund of the paid up consideration and that the objection proceedings were therefore not merited.
4. From the rival affidavit evidence this Court is unable to tell whether or not the sale agreement dated is a forgery or a nullity for failing to receive the necessary sanction of the Land Control Board. But whether or not the sale agreement is valid does not affect the outcome of these proceedings. The provisions of Section 66 of The Law of Succession Act sets out the order of preference of persons entitled to apply for Letters of Administration intestate. It provides:

“When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference-

- a. **Surviving spouse or spouses, with or without association of other beneficiaries;**

- b. **Other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;**
- c. **The Public Trustee; and**
- d. **Creditors:**

Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.”

- 5. The 1st Petitioner is a daughter of the deceased while the 2nd Petitioner is a niece. Simultaneously with filing the Petition, Colleta Akumu the widow to deceased gave a written consent dated 19th July 2012 to the Petition of the Petitioners. The Petitioners quite clearly take priority over the Objector (a creditor or purchaser) in the administration of the estate of the Deceased. The claim by the Objector cannot stand in the way of the Petitioners obtaining the Grant.
- 6. Yet the Objector may have a legitimate claim to the estate. The Objector will have to state and prove his claim during the distribution of the deceased estate. Section 71 (2) of The Law of Succession requires the ascertainment of Beneficiaries and creditors before Letters of Administration are confirmed. Then, not now, will be the occasion for the Objector to prove the validity and nature of his claim. The Objectors concerns are premature and his objection is without merit.
- 7. The objection proceedings are dismissed with costs to the Petitioner.

F. TUIYOTT

J U D G E

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

IN THE PRESENCE OF:

KADENYICOURT CLERK

.....FOR OBJECTOR

.....FOR PETITITONERS/RESPONDENTS