



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MILIMANI
SUCCESSION CAUSE NO. 928 OF 2000

IN THE ESTATE OF ONYANGO OGUTU Alias BENEDICT ONYANGO – (DECEASED)

JUDGMENT

1. The deceased person, Benedict Onyango Ogutu, whose estate is the subject of these proceedings, died on 26th August 1998. He was survived by a widow and five (5) children, two of whom were minors at the time. Representation to his estate was sought on 17th May 2000 by the widow and the deceased's eldest son. A grant of letters of administration intestate was made to the widow and son of the deceased on 18th July 2000.
2. On 27th February 2004, the administrators sought confirmation of the grant. The assets sought to be distributed were shares with the East Africa Educational Publishers Ltd and money in two bank accounts held with the Standard Chartered Bank and Housing Finance Company of Kenya. The grant was confirmed on 9th November 2004. The estate was to devolve upon the administrators to hold in their own names for their own behalf and in trust for the children of the deceased. A certificate of even date was issued to that effect.
3. On 28th December 2012, Pauline Anne Ajuang Onyango moved the court by way of a summons of even date. She sought orders for revocation of the grant herein on the grounds that it was obtained on the basis of a false signature purported to be hers and that three landed properties were concealed from the court, being LR No. 37/542 Nairobi West, Kisumu East/Dago/1222 and a two-stoned house at Manyatta, Gonda, Kisumu. She also sought injunctive orders.
4. The applicant filed a further affidavit on 22nd April 2013 attaching copies of the documents to prove existence of the landed properties – that is to say Kisumu/Manyatta "A"/2242, Kisumu/Dago/1222 and LR No. 37/542 Nairobi West.
5. The said application was placed before Majanja J. during court vacation on 9th January 2013, when it was ordered that directions be taken on 22nd January 2013. On 14th May 2013, it was directed that the said application be disposed of by way of *viva voce* evidence.
6. I heard the parties on 7th October 2013. It was the applicant, Pauline Onyango and the 2nd administrator, Augustine Ogutu, who testified. It came out from both of them that the deceased had indeed died possessed of landed property.
7. I have perused through the record carefully. It is clear that when the administrators sought grant of letters of administration in 2000 they did not disclose to the court that the deceased owned landed property for they disclosed only the shares in a limited liability company and money in the bank. It is inconceivable that they did not know of the existence of the landed property since they resided in one of

them in Nairobi and the other at Kisumu. Even if I were to suppose that they were ignorant of the existence of these assets, I do not understand why they failed to move the court appropriately for amendment of the certificate of confirmation of grant once it came to their knowledge that these assets existed. I am of the view that these assets were deliberately concealed from the court.

8. The applicant also complains that the consent document filed simultaneously with the petition is false, for it purports to bear her signature yet on 8th April 1999 when it is purported that she executed the same she was out of the country. She has appended a copy of her passport to her further affidavit sworn on 22nd April 2013. From the entries it is evident that she landed at the Sahar Airport at Bombay, India, on 9th October 1997 and departed on 15th July 2002. The 2nd administrator himself admitted that the application for grant was made at the time when the applicant was out of the country. Quite evidently the consent document purportedly signed by the applicant on 8th April 1999 is false as she was out of the country at the time. Her alleged signature on the document is a forgery.

9. Revocation of grants is provided for under Section 76 of the Law of Succession Act. A grant will be revoked if the same was obtained through a process that was defective, or where there was concealment of matter from the court, or where there was fraud. Forging a document is fraudulent activity and if the forged document is to be uttered in a process, the fraudulent activity would make the said process defective. Forging a signature is outlawed by the Penal Code, Cap 63, Laws of Kenya. Forgery is a criminal activity. A process founded on criminal activity cannot be valid.

10. In view of the above I will make the following final orders:-

- a. That the grant of letters of administration intestate made on 18th July 2000 to Wilkister Adhiambo Onyango and Augustine Ogutu Onyango is hereby revoked;
- b. That the said grant shall be returned to the court registry for cancellation;
- c. That I hereby appoint Wilkister Adhiambo Onyango, Pauline Anne Ajwang Onyango and Augustine Ogutu Onyango administrators of the estate of Onyango Ogutu alias Benedict Onyango Ogutu alias Benedict Onyango;
- d. That a grant of letters of administration intestate shall issue to them accordingly;
- e. That the confirmation orders made on 9th November 2004 are hereby set aside and the certificate of confirmation of grant of even date cancelled;
- f. That former administrators shall return the said certificate to court for cancellation;
- g. That the new administrators shall apply afresh for the confirmation of the grant issued to them for the distribution of all the assets of the estate, including LR No. 37/542 Nairobi West, Kisumu/Manyatta "A"/2242, Kisumu/Dago/1222 and Kisumu/Dago/1521;
- h. That the application referred above shall be filed within 45 days of the date of this judgment, and this matter shall be mentioned on 9th July 20th for compliance; and
- i. That costs shall be in the cause.

DATED, SIGNED and DELIVERED at NAIROBI this 23rd DAY OF May 2014.

W. MUSYOKA

JUDGE