



REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
SUCCESSION NO. 32 OF 2014
IN THE MATTER OF THE ESTATE OF DOTO OWINO (DECEASED)
BETWEEN
MILKA ANYANGO OTIENO.....1ST APPLICANT
WALTER AKELO MBORO.....2ND APPLICANT
AND
KENNEDY OTIENO ODENY.....RESPONDENT

RULING

1. The application for consideration is a summons for revocation of grant dated 27th April 2014 made under **section 76** of the *Law of Succession Act (Chapter 160 of the Laws of Kenya)*. The applicant seeks to revoke the grant issued in Homa Bay *Chief Magistrates Succession Cause No. 263 of 2012* in respect of the estate of Doto Owino (Deceased).
2. The application is made by Mika Achieng Otieno, a wife to a son of the deceased and one Walter Akelo Mboro, a purchaser of part of the property of the deceased. The application is grounded on the principal fact that the objectors were not aware of the filing of the application for the grant and it was issues without involvement of the members of the family of the deceased.
3. It is not in dispute that Doto Owino (deceased) had three sons who are also deceased; Ganda Doto, Otieno Doto and Odeny Doto. Ganda Doto is survived by a wife, Esther Ayot and two sons, Joseph Ouma Ganda and Thobias Ganda. Otieno Doto is survived by Milka Otieno and three sons; Hezron Otieno, Kennedy Otieno and Stephen Otieno. Odeny Doto is survived by Kennedy Otieno Odeny, the petitioner and Jeremiah Ouma Odeny.
4. When he filed the petition for grant of letters of the administrations, the petitioner stated the deceased was survived by the following;
 - i. Kennedy Otieno Odeny – grandson
 - ii. Benard Ochieng Odeny – grandson
 - iii. Jeremiah Ouma Odeny – grandson
 - iv. Ezra Omollo – Buyer

v. Isaak Kajwang Ogola - Buyer

5. The letter from the Senior Chief dated 28th August 2012 to the Court accompanying the petition only cited Kennedy Otieno Odeny, Benard Ochieng Odeny and Jeremiah Ouma Odeny as the only heirs of the deceased.

6. Under **section 76(b)** of the **Law of Succession Act**, the court may on application or on its own motion revoke a grant of representation on the ground that, “*the grant was obtained fraudulently by making a false statement or by the concealment from the court of something material to the case.*” **Section 51** of the **Act** requires that a petition for the grant of letters of administration include, *inter alia*, the following information, “*in cases of total or impartial intestacy the names and address of all surviving spouses, children, parents, brothers and sisters of the deceased and of children of any child of his or her then deceased.*” This requirement is mandatory and is buttressed by **Rule 7(1)(e)** of the **Probate and Administration Rules**. The identities of the beneficiaries and their interests in the estate are material facts and once it is established their interests were concealed, the grant of representation issued is flawed. The petitioner did not disclose the fact that the deceased had other heirs other than himself and his brothers.

7. I have considered the depositions in support and in opposition of the application for revocation and it is apparent that the dispute is whether the deceased in his lifetime distributed part of his property to his sons. Under **section 42** of the **Act**, the court is entitled to take into account the property of the deceased settled in his lifetime for the benefit of any of the heirs and the court in distributing the estate.

8. In the circumstances, I make the following orders:

a. The grant of letters of administration issued to **KENNEDY OTIENO ODENY** on 11th September 2012 and confirmed on 20th August 2013 in **Homa Bay Chief Magistrates Court Succession Cause No. 263 of 2012** be and is hereby revoked.

b. A grant of letters of administration for the estate of **DOTO OWINO** (deceased) is hereby issued to **KENNEDY OTIENO ODENY & MILKA ANYANGO OTIENO**.

d. The administrators or any of them shall apply for confirmation of the grant within fourteen (14) days from the date hereof

d. In the meantime the status quo regarding **KANYADA/KOTIENO-KATUMA A/1024** shall remain in force pending confirmation of the grant or further order of the court.

e. Each party shall bear their own costs.

DATED and DELIVERED at Homa Bay this 25th day of June 2014.

D. S. MAJANJA

JUDGE

Mr Sagwe instructed by S. M. Sagwe and Company Advocates for the applicant.

Mr Kennedy Otieno Odeny, the petitioner, in person