



NO.48

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

SUCCESSION CAUSE NO. 311 OF 2010

WILLIAM AMUOM OGWENO.....1ST APPLICANT

PETER OKETCH OGWENO.....2ND APPLICANT

VERSUS

PETER ORINDA ONYACH.....RESPONDENT

JUDGMENT

1. This is an application dated 18th December, 2012 for the revocation of the grant issued to the respondent/petitioner on 5th August, 2011. The application is brought by two objectors. The revocation prays for orders, inter alia, as follows:-

1. *That the Honourable court be pleased to revoke and/or annul the grant of Letters of Administration issued to the Respondent/Petitioner herein on 5th August, 2011.*
2. *That the Honourable court be pleased to revoke and annul the registration of 29th September, 2011 relating to Land parcel No. East Karachuonyo/Kobala/2681 into the name of the Respondent/Petitioner or any other person.*
3. *That the Honourable court do order that the register with regard to the Land parcel No. East Karachuonyo/Kobala/2681 be rectified to reflect the names of MALIT OGWENO and DAVID OGWENO MALIT as the co-owners as was the case.*
4. *That the Honourable court do order the nullification any other titles which could have been created after the sub-division of the Land parcel No. East Karachuonyo/Kobala/2681.*
5. *That the Honourable court do issue an order that a proper petition be filed for the grant of Letters of Administration reflecting all the names of the Dependants of both the deceased persons.*
6. *That costs of this application be provide for.*

UPON GROUNDS:

1. *That the grant was obtained fraudulently by making false statement that the petitioner was the only surviving brother of the deceased persons.*
2. *That the grant was obtained fraudulently by concealing from the court every material facts that the deceased persons were father and son.*
3. *That the petitioner did not state to the court hat the Land parcel No. East Karachuonyo/Kobala/2681 was co-owned by both the deceased persons in equal shares.*
4. *That the petition as presented shows that the deceased persons as two different persons by the names MALIT OGWENO and DAVID MALIT OGWENO yet the grant has been issued in respect*

- of one deceased person thus: MALIT OGWENO alias OGWENO MALIT.*
5. *The deceased were two persons, each with his descendants.*

a).David Ogweno Malit's descendants are:

- i. *Peter Okech Ogweno-Son.*
- ii. *Aoko Ogweno-daughter.*

b).Petro Ogweno Malit's descendants are:

- i. *Penina Akello Malit-wife(Deceased)*
- ii. *David Ogweno Malit-son(deceased)*
- iii. *Mary Aloo Malit-daughter*
- iv. *Ogweno Malit-daughter*
- v. *Peter Okech ogweno-Grandson*
- vi. *Aoo Ogweno- Granddaughter.*
- vii. *Jaoko Ojiem Ogweno-brother(deceased)*
- viii. *Siko Oopdo Ogweno-Sister(deceased)*
- ix. *Dudi Ogweno-brother(deceased)*
- x. *William Annom Ogweno-brother*

6. *That as a result of this false and fraudulent grant, the petitioner was registered as the owner of Land Parcel No. East Karachuonyo/Kobala/681.*
7. *That since the Land parcel No. 2681 was co-owned, it is necessary that their respective descendants and beneficiaries participate in the petition for the grant.*
8. *That as a consequence thereof the descendants and beneficiaries of David Ogweno Malit have been deprived of their only inheritance.*
9. *The Death Certificates used to petition the grant appears dubious.*

2. In his replying affidavit 13th February, 2013, the respondent/Petitioner admits paragraphs 1 to 7 of the petitioner's supporting affidavits, that is, the petitioner acknowledges that the deceased persons, were two, that is, Malit Ogweno and David Ogweno Malit and that both had descendants and beneficiaries as described in paragraphs 6 and 7 of the supporting affidavits.

3. And yet in paragraphs 7 of his replying affidavit he admits that the reference to Ogweno Malit alias Ogweno Malit was done by the court, not him and yet this is manifestly not true. P&A5, the respondent describes himself as the surviving son of David Ogweno Malit and Malit Ogweno and yet this manifestly not true.

4. It appears true that the petitioner/respondent was given a burial permit (POO-1) to process the grant Letters of Administration, not in his name, but in the name or names of the son or uncle of the deceased persons and their respective estates in which he was to be an interested party, having purchased part of Plot parcel, East Karachuonyo/Kobala/2681.

5. He however took advantage and concealed material facts relating to the estate, relating to the descendants and beneficiaries of the two deceased persons i.e. Ogweno Malit and David Ogweno Malit.

6. Therefore the court finds there was fraud, in concealment of the above material facts to the two estates. If the two deceased persons had assets else way, they were to be included in P&A-5, if the two deceased had beneficiaries, they were to be included in P&A5. None of these was done. The petitioner knew very well what he was doing and what he wanted to achieve.

7. Therefore the court finds that the application dated 18th day of December, 2012 be and is hereby allowed, the effect of which the grant issued on 5th August, 2011 be and is hereby revoked in its entirety. The court therefore orders as follows:-

1. *The process for the grant of Letters of Administration for the estates of Ogweno Malit and David Ogweno Malit to start de novo with family members of the respective two estates electing who to be the petitioner or petitioner if two are desirable.*
2. *The respondent/petitioner herein to join as an interest party with purchasing interest thereto.*
3. *The respondent/petitioner to be saddled with the cost of this application.*

8. It is so ordered.

Dated and delivered at KISII this 21st day of November, 2014

C.B. NAGILLAH,

JUDGE.

In the presence of:

Bunde for the applicants.

Onyango- not present for the respondent

Edwin Mongare Court Clerk.