



NO. 760

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

SUCCESSION CAUSE NO.311 OF 2010

IN THE MATTER OF THE ESTATES OF DODI ATENDO DECEASED

AND

ENOS ONYANGO ATENDO APPLICANT

VERSUS

CHARLES ODERO ADAGE 1ST PETITIONER/RESPONDENT

LEAH A. OTIENO 2ND PETITIONER/RESPONDENT

RULING

1. The applicant herein Enos Onyango Atendo filed a summons for revocation of grant dated 16th March 2011 expressed to be brought under **section 76** of the **Law of Succession Act, Rules 44, 58, 63** and **73** of the **Probate and Administration Rules, Order 40 Rules 1, 2, 3** and **10** of the **Civil Procedure Rules and Sections 1A, 1B** and **3A** of the **Civil Procedure Act, Cap 21** of the **Laws of Kenya** seeking orders THAT:-

- a. *The application be certified as urgent and service there within the 1st instance be dispensed with. (sic)*
- b. *The Grant of Letters of Administration issued to the Petitioner/*

Respondent herein on the 18th day of January 2011 in the estate of the above named Deceased be revoked and or annulled.

- c. *There be a conservatory Order of temporary order of injunction restraining the respondent herein from intermeddling in any manner adverse to the applicant with the Title No. KAMAGAMBO/*

KANYAJUOK/819 pending hearing [and] determination of this application.

2. The application was supported by an affidavit sworn by the applicant

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dated 16th March 2011 and on the following grounds:-

1. *The Grant was obtained fraudulently by making false statement.*
2. *The Grant was obtained by means of making untrue allegations of facts essential in point of law to justify the Grant thus:-*
 - i. *The purported deceased person herein is alive and is also known as ENOS ONYANGO ATENDO in whose name TITLE NO. KAMAGAMBO/KANYAJUOK/819 is currently registered, hence no succession could obtain;*
 - ii. *The applicants name has been included in the petition herein without his knowledge and his signature forged without his knowledge;*
 - iii. *The chief's letter presented herein is a total falsity as it purports that the applicant who is alive died in 1980.*
 - iv. *The Death Certificate presented herein is a pure fraud;*
 - v. *The signature by YUCABETH ODIDA ATENDO is a forgery;*
 - vi. *The signature by the sureties herein are a fraud and a forgery.*
3. In his affidavit, the applicant says he was utterly shocked to find that his signature had been forged on documents in support of the succession cause filed in the court below. He alleges total fraud in the manner the grant in the lower court was obtained.
4. Now that I have had the opportunity to read the competing affidavits and the respective submissions, it is imperative that for a just decision to be rendered in this case, the parties must give viva voce evidence which shall be tested by cross-examination.
5. In the circumstances, the court directs parties to take early dates for the taking of viva voce evidence.

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6. It is so ordered.

Dated and delivered at Kisii this 11th day of July, 2013

RUTH NEKOYE SITATI

JUDGE.

In the presence of:

Mr. Kisera (absent) for Appellant/Applicants

Mr. Owade for Respondent

Mr. Bibu - Court Clerk

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