



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
SUCCESSION CAUSE NO. 595 OF 2009

IN THE MATTER OF THE ESTATE OF ODIPO WANGOMA alias OTIBO WANGOMA
(DECEASED)

B E T W E E N

1. FRANCIS WESONGA ODIPO

2. JOHN MUNGAYI ODIPO APPLICANTS

V E R S U S

1. ALI OMONDI MALICHI

**2. MANEYA MAKOKHA
OSAMBAYO.....RESPONDENTS**

R U L I N G

The application dated 3.9.10 seeks orders for revocation or annulment of Grant and cross-application for Grant. The Grant of Letters of Administration the subject matter of these proceedings was issued on 15/2/2010 to the Respondent, ALI OMONDI MALICHI as the administrator in the estate of the deceased ODIPO WANGOMA alias OTIBO WANGOMA. The application is supported by the affidavit of FRANCIS WESONGA.

The main ground in support of the application is that the Grant was obtained fraudulently in that correct

information was not given.

The application is opposed to as per the replying affidavit of ALI MOHAMED MALICHI, the 1st Respondent. In a nutshell, the replying affidavit contends that land parcel No. Souty/Wanga/Lureko/181 that is the subject of these proceedings is ancestral land that belonged to their grandfather and was registered in the name of the deceased in his capacity as the eldest son to hold in trust.

The affidavit in support contends that the 1st and 2nd applicants are the only two sons of the deceased. That the 1st Respondent is a cousin and the 2nd Respondent a step-brother. The 1st Respondent in concedes that the deceased was his uncle. Paragraph No. 6 of the replying affidavit also raises the possibility that the 2nd Respondent is a stepson to the deceased.

The parties are therefore in agreement that the particulars of the surviving children of the deceased as stated in the petition are wrong.

The bone of contention is whether the applicants are entitled to inherit the estate of the deceased. This will be determined at the confirmation stage.

To safeguard the interests of all the parties herein, the grant issued to ALI OMONDI MALICHI on 15.2.10 is hereby revoked. A fresh grant to be issued in the joint names of the applicants and the respondent.

Cots to the applicants.

Delivered, dated and signed at Kakamega this 16th day of February, 2012.

B. THURANIRA JADEN

J U D G E