



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
SUCCESSION CAUSE NO. 207 OF 2008
IN THE MATTER OF THE ESTATE OF

LUCAS OBONYO HANDA DECEASED

AND

IN THE MATTER FOR AN APPLICATION FOR REVOCATION OF GRANT

1. DORCAS AMBIYO CHIMOTO
WILFRED OCHIENG ODUORAPPLICANTS

RULING

The matter before the court is a Summons for Revocation or Annulment of Grant Letters of Administration made by court on 25.2.2009 to Samson Ochieng Obonyo. The ground upon which the application is made is that he was not the person entitled in priority to obtain the grant.

I have carefully perused the affidavits in support and against the matter for revocation. I observed that the bone of contention between the objectors, Dorcas Ambiyio Chimoto and Wilfred Ochieng Oduor on the one hand and the Petitioner, Samson Ochieng Obonyo in respect of a parcel of land known as Marachi/Bumala/1472. The official search on record shows that the land was and is registered in the name of Lucas Obonyo Handa deceased. There is no dispute to the fact that the said Lucas Obonyo Handa, was the father of the Petitioner, Samson Ochieng Obonyo.

It is also clear from the records that Samson's father Lucas Obonyo Handa had two brothers i.e. (1) Vincent Oduor Handa and (2) Charles Owuor Handa. The evidence in the affidavits is to the effect that the family's ancestral land had been purportedly subdivided among the three sons of Handa and registered as Marachi/Bumala/1471.

Marachi/Bumala/1472

And Marachi/Bumala/1474

It is then claimed by the applicants/Objectors that Marachi/Bumala/1471 was to be registered in the name of Vincent Oduor Hand as Marachi/Bumala/1471 went to Charles Owuor Handa and Marachi/Bumala/1474 went to Lucas Obonyo Handa. It is the Objectors claim that although Bumala/1472 was to be registered in the name of Vincent Oduor Handa, it was not so registered because Lucas Registered it in his own name in trust for Vincent Oduor Handa, probably because of his then age of

minority. The objectors case accordingly, as the court tries to understand it, is that when Lucas Obonyo Handa died, the Petitioner who petitioned for his Grant should have included the Objectors who reside on Bumala/1472 as they claim, as beneficiaries for the purpose of passing the parcel to them since it was held in trust for their benefit.

As the evidence stands on record however, more and better evidence to prove a trust was not availed. In any case in the court's view, it would have been more appropriate if an independent suit had been filed separately to plead and prove the trust rather than attempt to squeeze such a process in an objection to the succession cause. A second alternative would be to allow full evidence to be adduced under this succession cause which however might be untidy although it would save time and costs. Having considered the two, I have settled for this second alternative. In those circumstance both sides will be properly warned as to what is expected of them so that their will be equal fairness to both sides.

ORDER:

1. Proceedings for proof of a trust to be through oral evidence with the opposite sides with informed right for cross examination.
2. Hearing date to be fixed in presence of both sides unless a party decides to ignore the Summons for attendance to court.
3. Issue of Attendance Summons to Petitioner, Samson Ochieng Obonyo, to be served by Court Process Server who must file an Affidavit of Service.

Dated and delivered at Busia this 24th day of August 2011

D.A.ONYANCHA
JUDGE