



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
OF KISII

Miscellaneous Application 43 of 2008

IN THE MATTER OF THE ESTATE OF:
SARAH OKELLODECEASED

AND

IN THE MATTER OF REVOCATION OF GRANT OF LETTERS OF ADMINISTRATION

BETWEEN

ROBERT OURU OICH)
RICHARD OSCA OUYA)..... OBJECTORS/APPLICANTS
GEOFFREY OUMA OUYA)

AND

LUDIA AUMA DIBUORO PETITIONER/RESPONDET

RULING

The petitioner filed **Succession cause No. 6 of 2008** in the **Principal Magistrate's Court at Migori**. In the said petition she stated that she is the mother of **Sarah Okello**, (hereinafter referred to as the “**deceased**” who died on 17th November 2007. The deceased was working at South Nyanza Sugar Company Limited (**Sony**).

In the said petition, the deceased's assets were shown as “**benefits from Sony**” whose estimated value was given as Kshs. 100,000/= . The said court issued a grant of letters of administration intestate on 4th April 2008.

On 12th May 2008 the applicants filed an application seeking revocation of the grant on grounds, *inter alia*, that it was obtained by fraud, concealment of material facts and/or deliberate misrepresentation.

The 1st applicant stated in his affidavit in support of application that the deceased was married to **Samuel Ouya Oich** (also deceased) who was his brother. The deceased and her late husband did not get any children. Oich had also married **Monica Atieno Ouya** and **Susan Atieno Ouya** both of whom predeceased **Sarah Okello**. Monica Atieno Ouya and her husband were blessed with three children namely, **Richard Osca Ouya**, **Geoffrey Ouma Ouya** and **Mary Adoyo Ouya**. Susan Atieno Ouya and her deceased husband sired one child known as **Victor Omondi Ouya**. The deceased (Sarah Okello) therefore had the following step children:

- **Richard Osca Ouya**
- **Geoffrey Ouma Ouya (2nd and 3rd applicants),**
- **Mary Adoyo Ouya and**
- **Victor Omondi Ouya.**

The applicants stated that the petitioner did not disclose

the above information in her petition. They also contended that the petition was filed in a court that lacked jurisdiction.

Although the aforesaid application was opposed by the petitioner, this court made an order by consent of counsel for the parties that Sony do provide a statement showing what the deceased's terminal benefits were with a view to determining whether the petition had been filed in a court of competent jurisdiction. By a letter dated 13th may 2009, the company secretary of Sony informed this court's deputy registrar that the deceased's terminal benefits amounted to **Kshs. 152,037.38/=**.

When the deceased was employed by Sony, she declared her husband, Samuel Ouya, as her next of kin. But in October 2007 she changed her declaration of the next of kin and gave the names of the petitioner (her mother), and her sisters **Millicent Adhiambo Madara** and **Neckline Akinyi**.

The deceased was also said to have given to her employer a document that was titled "**my will**" in which she restated the names of the aforesaid persons who were named as the people entitled to her terminal benefits. The purported will was not proved and after the deceased's death the petitioner applied for grant letters of administration intestate. She then sought an advance of the deceased's terminal benefits amounting to Kshs. 50,000/= which was given to her.

It is not clear whether the petitioner was aware of the alleged will of the deceased. It is however not in dispute that she applied for letters of administration intestate from a court that had no jurisdiction to issue the grant.

Section 47 of the **Law of Succession Act** clearly states that where the deceased's estate exceeds Kshs.100,000/=, jurisdiction to issue a grant of representation can only be exercised by the High Court. That being the case, this application must be allowed. I need not consider all the other issues that were raised by the applicants and opposed by the respondent. The petitioner shall bear the costs of this application.

DATED, SIGNED AND DELIVERED AT KISII THIS 23RD DAY OF MARCH, 2010.

D. MUSINGA

JUDGE.

23/3/2010

Before D. Musinga, J.

Mr. Ochwangi for the Applicants

Mr. Kisera for the Petitioner

Court: Ruling delivered in open court on 23/3/2010.

D. MUSINGA

JUDGE.