



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
SUCCESSION CAUSE NO. 149 OF 2010
IN THE MATTER OF THE ESTATE OF:

DACHE OCHOLA DECEASED
AND

TERESA OTIENO OTIENO 1ST APPLICANT
MARY AKEYO ARWA 2ND APPLICANT

VERSUS

JENIFHER ACHIENG RESPONDENT

RULING

The applicants’ application dated 1st April, 2010 seeks revocation of the Grant of Letters of Administration intestate which was made to **Jenipha Achieng Ousso** on 21st May 2009 on the ground that it was obtained fraudulently by the making of a false statement and concealment of material facts.

The applicant deposed in her affidavit in support of the application that she is a daughter in –law of the deceased. Her husband was **Joseph Otieno**, now deceased. Dache Ochola, deceased, died intestate leaving behind a parcel of land known as **Kamagambo/Kabuoro/575** which is their ancestral land. She said that the deceased had 3 sons, **Ouso Ochola**, **Joseph Otieno** and **Michael Arwa Dache**. The said Jenipha Achieng is the wife of Ouso Ochola (deceased) a brother of her husband. She added that Jenipha obtained the Grant fraudulently because she did not state that the deceased had daughters in-law who were also entitled to a share of the deceased’s estate. The Grant was issued by the Senior Principal Magistrate’s Court at Migori.

The respondent, Jenipha Achieng, filed a replying affidavit and stated that Dache Ochola was the first registered sole proprietor of land parcel **No. Kamagambo/Kabuoro/575** before he died on 20th July, 2003 leaving one surviving son known as **Thomas Odhiambo Dache** and the widows of his deceased sons. The sons were known as **Johnson Ouso Dache**, **Michael Arwa Dache** and **Joseph Otieno Dache**. She admitted that Teresa Atieno Otieno was the widow of Joseph Otieno. When she wanted to apply for letters of administration she pleaded with the other beneficiaries to avail money so that they could apply for the Grant but they all refused to give her saying they had no money. As a result she applied for the Grant but the letter which she obtained from the area Chief listed down all the beneficiaries including the applicants. The Grant was confirmed on 21st May 2009. She added that she was merely an administrator of the estate but the said land had not been distributed amongst the beneficiaries. In her view the applicants’ application was misconceived.

The respondent annexed a copy of the Certificate of Confirmation of Grant to her affidavit. It shows that she sought to be the sole beneficiary of the aforesaid parcel of land. Even if she intends to have the land shared out amongst all the beneficiaries of the deceased’s estate the certificate of confirmation shows otherwise. The same was issued on 21st May 2009. There is no evidence that she has not so far had the title deed to the said land transferred to her alone.

Secondly, from one of the exhibits annexed to the respondent’s affidavit, “**JAO 4A**”, it appears that the Land in question is more than 3 acres in measurements and thus valued at more than Kshs. 100,000/= which is the limit in terms of pecuniary jurisdiction of subordinate courts for probate and administration matters.

A Grant issued by a court without jurisdiction is a nullity.

For these reasons, I grant the prayers sought by the applicants in their application. Each party to bear its own costs.

DATED, SIGNED AND DELIVERED AT KISII THIS 26TH DAY OF JULY, 2010.

D. MUSINGA
JUDGE.

26/7/2010

Before D. Musinga, J.

Mobisa – cc

Mr. Minda for G.S. Okoth for the Applicant

N/A for the Respondent

Court: Ruling delivered in open court on 26th July, 2010.

D. MUSINGA
JUDGE.