

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Succession Case 1144 of 2004

IN THE MATTER OF THE ESTATE OF KENNETH ONYANGO KHADUDU (DECEASED)

JANETRIX ATIENO MALOBA.....1ST PETITIONER

JOHN SEBASTIAN MALOBA.....2ND PETITIONER

VERSUS

KHADUDU ONYANGO AND FIVE OTHERS.....OBJECTORS

RULING

Before me is a summons for revocation or annulment of grant dated 2nd August 2004. The application has grounds on the face of the summons and is supported by the affidavit of the objectors sworn by them jointly on 2nd August 2004. The objectors are five in number. They are described as mother, father, sister, brother and sister of the deceased.

At the hearing of the summons on 7/6/2006, Mr. Seneti appeared for the objectors, while Mr. Mokaya appeared for the administrator. Mr. Seneti submitted that the grant of letters of administration herein was obtained by way of fraud. The administrator was not the wife of the deceased, as she had left him in 2003. The grant of letters of administration was issued secretly. The administrator was not, in any case, married to the deceased under Luhya customary law. She obtained the letters of administration jointly with her brother, and she conceded in her replying affidavit that she was willing for her brother to be removed as a co-administrator.

Mr. Mokaya for the administrator relied on the replying affidavit sworn on 22/2/2005 (which incidentally I have not seen in the file though it is admitted by the objectors in their further affidavits). He contended that there was a valid marriage and dowry was paid and the transaction reduced into writing. The respondent was chased away from home and the letters of administration were not taken in secret. The family of the objectors refused to cooperate, that is why the administrator obtained letters of administration without them.

I have considered this application and the submissions of counsel for the parties. Under section 76 of the Law of Succession Act (Cap. 180) this court has powers to revoke or annul letters of administration whether or not the same have been confirmed. In our present case letters of administration were issued on 28th June 2004. They have not been confirmed. There is a dispute between the administrator and the objectors. The objectors are relatives of the deceased. That is not disputed.

I find that in the interests of justice and that the interest of all parties can be taken into account the letters of administration herein should be revoked or annulled. I therefore allow the application and revoke or annul the letters of administration issued herein. Letters of administration will therefore have to be applied for in accordance with the law applicable

It is so ordered.

Dated at Nairobi this 28th day of June 2006.

GEORGE DULU

AG. JUDGE