

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

SUCCESSION CAUSE NO.288 OF 2009

IN THE MATTER OF THE ESTATE OF BONIFACE OKELLO OKUMU (DECEASED)

RULING

[1] The deceased **BONIFACE OKELLO OKUMU** passed away on the 31st August 1979 at the age of sixty five (65) years leaving behind his children, Okumu Okello, Stephen Egesa Okello, Odero Okello, Benard Ojiambo Nyangweso, Francis Joseph Bwire Okumu and Anyango Okello (herein beneficiaries). His sole immovable property consisted of land parcel **NO.SOUTH TESO/ANGOROMO/380**. After a considerable period of time the beneficiaries Stephen Egesa Okello and Odero Okello petitioned for letters of administration intestate respecting the estate of the deceased. This was on the 14th October 2009, and on the 1st February 2010 the grant was accordingly issued. Thereafter, the first petitioner **STEPHEN EGESA OKELLO** belatedly on the 27th November, 2012, took out the necessary summons for confirmation of grant on the basis of the mode of distribution set out in the supporting affidavit and the consent of distribution filed herein on 30th May 2013, and a further affidavit dated 26th June 2018, deponed by **THE SECOND PETITIONER, ODERO OKELLO**.

[2] Apparently, the two petitioners did not agree on the mode of distribution prompting the court to make or attempt to resolve the disagreement. Accordingly, the court rendered a ruling on 31st July 2014, upholding the mode of distribution proposed by the second petitioner, Odero Okello. In that regard, the necessary certificate of confirmation of grant was issued on 18th November 2014. However, the second petitioner took out summons for revocation on annulment of grant dated 19th December 2014 and filed herein on 6th October 2020, on the basis that the grant was obtained fraudulently by making of a false statement and concealment of material facts, that the first respondent/first petitioner is not a biological son of the deceased hence a stranger not entitled to a share of the deceased's estate, that the certificate of confirmation of grant does not tally with the acreage on the grounds and that some of the beneficiaries mentioned in the certificate of confirmation of grant have since passed away.

[3] Basically the applicant prays for a revocation order respecting this certificate of confirmation of grant issued on the 31st November 2014 rather than revocation or annulment of the main grant of letters of administration dated 1st February 2010. Be that as it may, whereas a revocation of the grant would invariably necessitate the revocation of a certificate of confirmation of grant, the revocation of a certificate of confirmation of grant would not necessitate the revocation of the main grant. The grounds in support of the application are more conducive to an application for revocation of the main grant rather than the certificate of confirmation of grant. Nevertheless, the court may on its own motion revoke both the grant and the certificate of confirmation of grant if the interests of justice so demand.

[4] The hearing of this application was by way of affidavit evidence and written submissions. All these have been given due consideration by this court with a view to determining whether or not the applicant has made out a good case for exercise of discretion in his favour by way of revocation of the impugned certificate of confirmation of grant. In that regard the allegations of fraud and concealment of material facts were not established and/or supported by cogent and credible evidence and more so the fact that the first petitioner (herein referred to as the respondent/second petitioner) is a stranger to the estate of the deceased by dint of not being a biological son of the deceased. Annexure marked "00-1" in the supporting affidavit is not evidence of kinship or non-kinship. It does not prove or establish whether or not the respondent is a biological son of the deceased. Besides, the authenticity of the document is doubtful and considering the issue of the respondent's kinship with the deceased was never raised before and immediately after the main grant was obtained by both petitioners, it would appear quite strong that the allegation is an afterthought and the document (Annexure "00-1") a false document to be of any probative value.

[5] In any event an interest in the estate of a deceased person is not tied to kinship only. A person may not have any blood relationship with a deceased person but may nonetheless have an interest in the estate property in any other capacity such as being a creditor or a dependant of the deceased in terms of **Section 26 of THE LAW OF SUCCESSION ACT**.

With regard to the fact that the certificate of confirmation of grant does not tally with the actual acreage of the said property, the error or mistake or misconception would not be a ground for revocation of the certificate but rather for rectification of the certificate. In regard to the demise of some or one of the beneficiaries of the estate after the confirmation of the grant, the fact whether proven or not would also not be a ground for the revocation of the certificate. In any event the estate was spent the moment the certificate of confirmation of grant was issued. Any issue arising thereafter would be subject of separate distinct cause or/causes of action. Besides, transmission of the estate of a deceased person to the heirs would follow the course charted by the **LAW OF SUCCESSION ACT**.

[6] In sum, the present application is clearly lacking in merit and good faith and is hereby dismissed with costs to the respondent. Although this is essentially a family matter the lack of good faith on the part of the applicant in bringing this application condemns him to meet the respondent's costs of the application.

Ordered accordingly,

J.R KARANJA

J U D G E

16.3.2021

[READ AND SIGNED THIS 16TH DAY OF MARCH, 2021].