



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT BUSIA**

**SUCCESSION CAUSE NO.295 OF 2012**

**IN THE MATTER OF THE ESTATE OF OMONDI AJWALA alias OMONDI OJUALA (DECEASED)**

**BETWEEN**

**ISAISH OMONDI ODHIAMBO.....OBJECTOR**

**VERSUS**

**GEORGE OWINO OPONDO.....PETITIONER**

**VERSUS**

**JOTHAM GODFREY MULAMBA**

**MILTON HUMPHREY A. AKELLO.....INTERESTED PARTIES**

**RULING**

[1] The grant of Letters of Administration Intestate respecting the estate of the Late Omondi Ajwala (**DECEASED**) was issued to Anjeline Anyango Akinyi (**PETITIONER**) on the 20<sup>th</sup> March 2013 and on the 17<sup>th</sup> September 2013, she took out the necessary summons for confirmation of the grant on the basis of the mode of distribution of the estate set out in paragraph five (5) of her supporting affidavit service was fortified by a consent of distribution dated 20<sup>th</sup> May 2014 and signed or thumbprinted by all the beneficiaries who included the petitioner as the only surviving sister of the deceased and deceased's two nephews Jonathan Godfrey Mulamba and Milton H.A Okello.

[2] Accordingly, the necessary certificate of confirmation of the grant was issued by the court on 12<sup>th</sup> June 2014, thereby completing the distribution of the estate to the beneficiaries. However, on the **10<sup>TH</sup> JULY 2015** an application of the grant was filed by Isaiah Omondi Odhiambo (**OBJECTOR**) on the basis that the grant was "*inter alia*" obtained by concealment of material facts. Apparently, the application remains pending for hearing and determination. In the meantime, the objector filed a second application dated **14<sup>TH</sup> MARCH 2017**, for submissions of the petitioner who is the deceased and issuance of a fresh grant of Letters of Administration. On 7<sup>th</sup> November, 2017, the court allowed the first prayer for submissions of the late petitioner for George Owino Opondo the administrator of the estate of the deceased. As to the second and seemingly mode and prayer that a fresh grant be issued in the name of the objector, the court directed that the application be heard on 29<sup>th</sup> January 2018 on which date the matter was not dealt with and instead a hearing date for the objector's application for revocation of grant was fixed for 12<sup>th</sup> February 2018, on which date the application dated 14<sup>th</sup> March 2017, was reinstated for hearing on 24<sup>th</sup> April 2018.

[3] Come the 24<sup>th</sup> April 2018, the application was not dealt with in court. Instead the objector through his advocate appeared in the registry and fixed for hearing on 24<sup>th</sup> October 2018 what he called objection proceedings. This clearly implied that the objector decided to proceed with his application for revocation of grant dated 10<sup>th</sup> May 2015, and abandoned the other application dated 14<sup>th</sup> March 2017. Nevertheless, the objection proceedings did not take place as scheduled on 24<sup>th</sup> October 2018. These, were instead re-scheduled to 30<sup>th</sup> January 2019 when the surviving beneficiaries of the said i.e the two nephews of the deceased, were completed into the application as interested parties and the matter stated for hearing on 27<sup>th</sup> March 2019 on which date it was adjourned to 23<sup>rd</sup> September 2019 and again to 2<sup>nd</sup> December 2019, when it was fixed for mention on 16<sup>th</sup> December 2019, when the hearing was fixed for 23<sup>rd</sup> March 2020 when it stalled or was rendered inactive not probably due to the scaling down of court operations on account of the ongoing covid 19 pandemic.

[4] After scaling up of court operations in the month of June 2020, the pending application for revocation of grant was fixed for hearing on 10<sup>th</sup> November 2020, but the date was changed to 26<sup>th</sup> January 2021 when it was adjourned to 10<sup>th</sup> March 2021 on account of the transfer of

the then trial judge. On that 10<sup>th</sup> March 2021, this court directed that the application be canvassed by way of affidavit evidence and written submissions. In that regard, the objector's submissions were filed on his behalf on 9<sup>th</sup> April 2021, by **GABRIEL FWAYA ADVOCATES** while those of the petitioner were filed on 12<sup>th</sup> April 2021 by **D.K. NABULINDO & CO. ADVOCATES** and those of the interested parties were filed on 18<sup>th</sup> March 2021 by **J.V. JUMA & CO. ADVOCATES**.

[5] Having considered the application on the basis of the supporting ground, and those in opposition thereto as witnessed by the interested parties, in that respective supporting or replying affidavit and also on the basis of the parties written submissions, it is apparent that the exercise and indeed the whole issue up to this point has been futile or to put it more optly, in exercise infutility. The reason for this conclusion are borne in this file record especially from the 7<sup>th</sup> November 2017, when the objector's application dated 14<sup>th</sup> March 2017 was partly granted in terms of prayer one (1) thereof allowing the subdivision of the previous deceased administrator, **ANJELINE ANYANGO AKINYI** for the purported present administrator/petitioner, **GEORGE OWINO OPONDO**. Why say purported administrator/petitioner? The answer is that there was no first or awarded grant issued in the name of the substituted George Owino Opondo to facilitate commensurate amendment of the objector's application for revocation of grant to read the name of George Owino Opondo as the petitioner rather than Anjeline Anyango Akinyi. As it were, there is no application for revocation of grant against George Owino Opondo but against the deceased Anjeline Anyango Akinyi.

[6] Without necessary issuance of an amended grant in favour of George Owino Opondo and also without amendment of the application for revocation to read the name of the said George Owino Opondo, there is in exercise no application against the purported petitioner for determination by this court. In any event prayer one (1) of the application by the objector dated 14<sup>th</sup> March 2017 was incapable of being implemented by the issuance of a fresh amended grant to the substituted George Owino Opondo as the objector had in his second prayer which remained pending asked for a fresh amended grant to be issued in his name. The amendment of that prayer led to the arrest unfortunate situation which needs to be undone by this court involving its interest jurisdiction under **RULE 73** of the Probate & Administration Rules to the extent that the "*status quo*" existing as at the 14<sup>th</sup> March 2017, over the objector's application or substitution of the deceased petitioner was made be and is hereby restored with orders that the deceased's surviving nephews and beneficiaries of his estate who are the interested parties herein be and are hereby substituted as the new administrator of the estate of the deceased to have the place of the departed administrator, Anjeline Anyango Akinyi.

[7] Accordingly, a fresh amended grant of letters of administration intestate shall forthwith issue in the names of the interested parties who shall ensure that the necessary summons for confirmation of grant are taken out within the next four (4) months from this date hereof.

Costs of the application be borne by each party

Ordered accordingly.

**J.R KARANJAH**

**J U D G E**

**16.3.2021**

[Read and signed this 15<sup>th</sup> day of April , 2021].

**[In the presence of Mr. Okutta holding brief for Mr. Fwaya for objector and M/s Nabuindo for the petitioner]**