



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT HOMA BAY

PROBATE & ADMINISTRATION NO.7 OF 2019

IN THE MATTER OF THE ESTATE OF:

ORINDA ORA.....DECEASED

BETWEEN

THOMAS NYAKADO ABONGO.....APPLICANT/OBJECTOR

AND

JOSEPH ARUM ODILA.....RESPONDENT/PETITIONER

RULING

1. Thomas Nyakado Abongo, the applicant herein, moved the court by summons dated 2nd April, 2019 for revocation of a grant issued on 11th February 1998 under section 76 of the Law of Succession Act, Rules 40 (1) and 73 of Probate and Administration Rules. He is seeking the following orders:

a) That this honourable court revokes the certificate of confirmation of the grant herein.

b) That this honourable court declare that land parcels numbers Kasipul/Kokwanyo/1451 & 1452 being subdivisions from Kasipul/Kokwanyo/884 both registered in the name of the petitioner/respondent be merged and revert back to the original number and be registered in the name of the applicant/objector.

c) The cost of this application be provided for.

2. The application was premised on the following grounds:

a) That the respondent misrepresented himself whereas he has no relationship with the deceased.

b) That the respondent is not a grandson of the deceased herein.

c) That the applicant is a step son of the deceased herein.

3. The respondent was served to attend court for directions but he failed to attend. The applicant opted to proceed by way of written submissions.

4. Upon my perusal of the supporting affidavit, the submissions of the applicant as well as the record, the following facts emerge:

a) That in Form P. & A. 5, the respondent described himself as a grandson of the deceased herein and the sole heir.

b) The contention by the applicant that the respondent is a stranger to the estate of the deceased went unchallenged.

5. The deceased died without leaving any nucleus family. His estate is therefore governed under the provisions of section 39 (1) of the Law of Succession act that provides:

Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority—

(a) father; or if dead

(b) mother; or if dead

(c) brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none

(d) half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters, in equal shares; or if none

(e) the relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.

6. The respondent failed to respond to the damning contention that he is a stranger to the estate of the deceased herein.

7. I accordingly make an order that the titles in respect of that land parcels numbers Kasipul/Kokwanyo/1451 & 1452 be cancelled and the revert to the original land parcel number Kasipul/Kokwanyo/884 in the name of the deceased herein.

8. I therefore revoke the grant issued to the respondent and appoint the applicant to be the administrator of the estate of the deceased herein. I am giving the administrator 30 days within which to file a proposal for distribution. He should involve Job Ochieng Otieno, Odhiambo Otieno and Amos Otieno.

9. The respondent will meet the costs of this application.

DELIVERED AND SIGNED AT HOMA BAY THIS 15TH DAY OF JUNE, 2021.

KIARIE WAWERU KIARIE

JUDGE