

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

SUCCESSION CAUSE NO.298 OF 2013

IN THE MATTER OF ESTATE OF SEBASTIAN MAKHONO ASOSO (DECEASED)

AND

SIMON ODUORY OKEYAAPPLICANT/OBJECTOR

VERSUS

OKELLO MAKHONO OSOSO.....PETITIONER/RESPONDENT

R U L I N G

[1] On 3rd July 2014, grant of letters of administration intestate respecting the estate of the late Sebastian Makhono Ososo (**deceased**) was granted to Okello Makhono Ososo (**petitioner**) but on the 2nd October 2014, Simon Oduory Okeya (**objector**) filed an application for revocation of the grant.

The court heard the application and dismissed it on 1st October 2015. The present application dated 19th September 2019, is therefore for confirmation of the grant on the basis of the grounds and averments contained in the supporting affidavit dated 10th September 2019. However, on the 26th January 2021 the objector filed an affidavit of protest dated 25th January 2021, which was canvassed by way of written submissions.

[2] The objector's submissions were filed herein on 4th May 2021, while those of the petitioner were filed on 28th June 2021, through **J.V. Juma & Co. Advocates**.

Having considered the application for confirmation of grant and the protest thereto in the light of the supporting grounds and the rival submissions, it was apparent to this court that the bone of contention is the distribution of the estate property being land parcel **No.Bunyala/Bukoma/40**, among the actual and true beneficiaries. In that regard, there is no dispute that this property being one of the three parcels of land belonging to the deceased was availed for distribution to both the petitioner and the objector and others. All of them were held and treated as the rightful beneficiaries of that specific property. However, the objector disagreed with the proposed distribution of 0.035Ha of the property to himself and contended that he was entitled to 0.11 Hectares of the property on account of a sale agreement entered between him and the petitioner's family. This is actually the main reason why he is protesting the confirmation of the grant on the basis of the proposed mode of distribution made by the petitioner.

[3] In his answer to the protest vide a replying affidavit dated 29th January 2021, the petitioner contended that part of the property was sold to third parties by his mother but not the deceased and that in any event, no land was sold to the objector but his wife called Melisa Nawira Okeya. That, after the dismissals of the objector's application for revocation of grant, his wife requested him (**petitioner**) to substitute her mode for that of the objector in the list of purchasers of part of the property.

[4] From all the facts foregoing, it is this court's opinion that there is no genuine or meritable protest to the petitioner's summons for confirmation of grant and indeed the proposed mode of distribution. The disagreement over the size of the portion of the estate property purchased by the objector through his wife is not a proper dispute for hearing and determination by this succession court but the Environment and Land Court. This court would therefore have no jurisdiction to deal with such dispute inasmuch as it is anchored on a sale or purchase of an interest in the estate property subject of the objector's protest.

In the upshot, the protest is hereby dismissed for want of merit with the result that the application for confirmation of grant dated 19th September 2014, be and is hereby allowed to the extent that the material estate property shall be distributed in accordance with the proposal set out in paragraph four (4) of the petitioner's supporting affidavit dated 10th September 2019.

The costs of the application be borne by the objector.

Ordered accordingly.

J.R KARANJAH

J U D G E

[Read and signed this 22ND day of JULY 2021]

[In the presence of Mr. Okutta holding brief for Mr. Juma for petitioner]