



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT HOMA BAY

PROBATE & ADMINISTRATION NO.891 OF 2015

IN THE MATTER OF THE ESTATE OF: PETRO ONDORO ONUNGA (DECEASED)

BETWEEN

MARY ADERA OGUMBO.....APPLICANT

AND

GEORGE OPIYO LUSI.....RESPONDENT

RULING

1. Mary Adera Ogumbo, the applicant herein, moved the court by way of summons for revocation of grant dated 31st December, 2020 premised on grounds that can be summarized as follows:

- a) That the petitioner/respondent has failed to administer the estate of the deceased as lawfully required hence the need to appoint another administrator and/or administrators.
- b) That the petitioner concealed material facts from the court by failing to disclose that the applicant was the only surviving sibling and/or beneficiary to the deceased.
- c) That the grant was obtained hurriedly without filing proper schedule of distribution.
- d) That the applicant/respondent is the only surviving daughter of the deceased while the respondent is a grandson from another family.
- e) That the grant was obtained fraudulently.

2. The application was opposed by the respondent on ground that the deceased during his lifetime had given to him a portion of the land.

3. Section 76 (b) of the Law of Succession Act provides as follows:

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

(a) that the proceedings to obtain the grant were defective in substance;

(b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;

(c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;

4. The respondent does not deny that the applicant was the daughter of the deceased herein. He however failed to disclose this fact in Form P & A. 5. He listed other purported beneficiaries and left the applicant out. I therefore find that the grant was obtained fraudulently and by means of untrue allegations.

5. The application is allowed with costs. The applicant is hereby appointed administrator and ought to file proposed mode of distribution

within 30 days.

DELIVERED AND SIGNED AT HOMA BAY THIS 21ST DAY OF JULY, 2021

KIARIE WAWERU KIARIE

JUDGE