



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

SUCCESSION CAUSE NO.369 OF 2010

IN THE MATTER OF THE ESTATE OF SILPHANO OWONGO

ONDIEKA Alias SILPHANO OWONGO (DECEASED)

AND

IN THE MATTER OF AN APPLICATION FOR LETTERS OF

ADMINISTRATION INTESTATE BY NICASIO OONGO –APPLICANT

AND

IN THE MATTER OF AN APPLICATION FOR REVOCATION

OR ANNULMENT OF GRANT TO NICASIO OONGO BY

MOSES SIMIYU MUBASSU & QUEENTONE OUMA (OBJECTORS)

QUEEN OUMA.....1ST OBJECTOR/APPLICANT

MOSES SIMIYU MUBASU.....2ND OBJECTOR/APPLICANT

VERSUS

NICASIO OONGOPETITIONER/RESPONDENT

R U L I N G

[1] Pursuant to the petition for letters of administration intestate filed herein on 22nd December 2010, respecting the estate of the late Silphano Owongo, the grant of letters of administration intestate was issued by this court on 14th March 2011 to Nicasio Oongo (**petitioner**).

The property availed for administration and distribution was **land parcel No.Marachi/Elukhari/1154**. The listed beneficiaries were the widow of the deceased Victoria Sikoyo and five of their children i.e. four (4) sons and one (1) daughter. The daughter and two sons, Micheal and Benedict, were listed as deceased.

To date, the grant remains unconfirmed, but apparently, the aforementioned estate property has since been transferred to the petitioner to the exclusion of the listed beneficiaries or/and any other beneficiary.

[2] Nonetheless, on the 28th January 2021, the present application vide the summons for revocation or annulment of the grant dated 27th January 2021, was filed against the petitioner by Queenstone Ouma and Moses Simiyu Mubassu the first and second **objectors** respectively, on the basis of the grounds set out in the summons and fortified by the averments and annexures contained in the supporting affidavit deponed by the objectors.

The petitioner opposed the application on the basis of the grounds contained in his replying affidavit undated but filed herein on 17th August 2021.

[3] The application was argued by way of written submissions.

Both parties filed their submissions through **Omondi Abande & Co. Advocates** and **Ouma Okutta Associates Advocates**, respectively. Having considered the application and the rival submissions, it was apparent that the basic issue for determination was whether the grant was obtained by the petitioner by fraud and concealment of material facts in relation to the true and actual beneficiaries of the deceased's estate.

In that regard, the objectors contended in their submissions that the petitioner fraudulently transferred to himself the estate property in total disregard of the other beneficiaries and continues to reap income from the lease of the property to Safaricom Ltd. That, the petitioner filed a succession cause in the year 2010 but abandoned it later and subsequently filed another such cause in the year 2019. That, all these happened without the knowledge of the other beneficiaries including the two objectors who are grandsons of the deceased.

[4] The objectors further contended that the chief's letter dated 7th December 2010 which was relied upon by the petitioner to apply for the grant was full of malice and falsehood as the family members had not agreed that the deceased's estate was to be administered by the petitioner instead of the deceased's surviving widow.

All these contentions were opposed by the petitioner as shown in his replying affidavit in which he disputes the objector's "*locus standi*" in this matter, yet he admits that they are grandsons of the deceased by virtue of being the sons of his (petitioner's) late brother. The petitioner and his late brother, father of the objectors, are sons of the deceased. In his submissions, the petitioner implied that all the beneficiaries of the estate were catered for in the distribution of the estate but that they have failed to obtain their respective titles. He contended, rightly that the objectors did not rank higher than him in applying for the grant. However, most importantly, he did not dispute the fact that the deceased left a surviving widow who was higher in rank than him in applying for the grant. Further the petitioner did not dispute that the estate property was solely distributed and transferred to him without the material grant having been confirmed.

[5] The petitioner did not also dispute that the family did not agree that he should administer the deceased's estate instead of the deceased's surviving widow as indicated in the chief's letter dated 7th December 2010. Indeed there is no evidence from other beneficiaries in support of that impugned part of the chief's letter.

It would therefore follow that the petitioner in applying and obtaining the grant did so by concealment of material facts and fraudulently caused the registration of the estate property in his name to the exclusion of all other beneficiaries thereby transmitting the property to himself without the grant being confirmed and a certificate of confirmation of grant being issued by the court.

[6] In that regard, the law is very clear **S.71 (1)** of the **Law of Succession Act** provides that:-

“After the expiration of a period of six (6) months, or such a shorter period as the court may deem under sub section (3) from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower the distribution of any capital assets.”

Clearly, the petitioner had no power to distribute the property to himself and/or any other beneficiaries without the courts sanction to do so. He therefore acted fraudulently by transferring and registering the deceased's estate to himself. Indeed, the grant which would have enabled him to administer and distribute the estate was, as shown herein obtained by false representation and concealment of material facts.

This objection or application is therefore for granting and is hereby allowed as prayed to the extent that the material grant be and is hereby revoked and all subsequent transactions undertaken on its strength be and are hereby declared null and void with the result that the title respecting the estate property shall revert to the deceased by necessary rectification of the register.

Ordered accordingly,

J.R. KARANJAH

J U D G E

[Read and signed this 15TH day of JULY 2021]