

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

PROBATE & ADMINISTRATION CAUSE NO.374 OF 2015

IN THE MATTER OF THE ESTATE OF WANYAMA KUBALI

(DECEASED)

KOBA WANYAMA.....PETITIONER

VERSUS

HALIMA S MAKETE.....1ST OBJECTOR

LINET ADHIAMBO.....2ND OBJECTOR

R U L I N G

[1] Upon the death of Wanyama Kubali (**deceased**) on 8th May 1990, a petition for letters of administration intestate was belatedly filed on the 21st September 2015, by Koba Wanyama (**petitioner**) respecting the estate of the deceased comprising of a parcel of land described as **Bukhayo/Buyofu/405**.

The letter from the Chief dated 18th September 2015, indicated that the petitioner was the sole survivor of the deceased and sole beneficiary of his estate.

After the usual pre-requisite procedure, the grant of letters of administration intestate was eventually issued to the petitioner on the 3rd May 2016, but remains unconfirmed to date.

[2] Meanwhile, on the 30th January 2019, an application for revocation of the grant was filed by Halima Makete and Linet Adhiambo (**objectors**) vide the summons for revocation of grant dated 22nd December 2016, on the basis that the grant was fraudulently obtained by the petitioner by making a false statement regarding the actual beneficiaries of the estate and presenting himself as the sole beneficiary.

The respondent responded to the application on the basis of the averments contained in his replying affidavit dated 5th April 2017 as buttressed by the affidavits of Paskalia Nanzala Makokha dated 5th April 2017, Vincent Barasa Mariko, dated 5th April 2017 and Majalita Namukuru Aura dated 5th April 2017.

[3] The hearing of the application proceeded by way of affidavit evidence and written submissions, which were filed herein by both parties through **Ouma Okutta & Associates Advocates** and **Manwari & Co. Advocates**, respectively.

From the facts accruing in both the supporting and replying affidavits together with the arguments raised by the parties respectively, it is clear and apparent that the allegations made herein by the objectors against the petitioner are not substantially or at all disputed. It is evident that contrary to what the petitioner stated and represented in his petition for the letters of administration, he was not the sole survivor of the deceased and sole beneficiary of the deceased's estate.

[4] It was herein established that apart from the petitioner, the deceased who was a polygamist with two wives was survived by seven children including the petitioner and the objectors and that he actually owned half of the material estate property and not the entire portion. In the circumstances all the beneficiaries comprising of three sons and four daughters were each entitled to a share of half of the portion of the estate property owned by the deceased. The other half actually belonged to the petitioner and was therefore unavailable for distribution.

It would follow that as a result of misrepresentation and concealment of material facts on the part of the petitioner, the present application is merited and is hereby allowed to the extent that the grant issued to the petitioner on the 3rd May 2016, be and is hereby revoked and a fresh grant be issued in the names of the petitioner and the first objector, Halima S. Makete and the necessary summons for confirmation of the new grant be taken out within the next four (**4**) months from this date hereof. In default the matter be referred to the public trustee for distribution of the estate in accordance with the law.

Matter be mentioned on 19/10/2021 for a status report.

J.R. KARANJAH

J U D G E

[READ AND SIGNED THIS 15TH DAY OF JULY 2021]