



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT BUSIA**

**SUCCESSION CAUSE NO.158 OF 2015**

**FRANCIS AWORI OLUMA.....PETITIONER**

**VERSUS**

**VITALIS ANDIEGE OTIENO.....OBJECTOR**

**R U L I N G**

[1] According to the certificate of death filed herein and dated 15<sup>th</sup> April 2015, the deceased, **Abalu Awori**, died on 1<sup>st</sup> January 1975 at the age of sixty five (65) years.

On 16<sup>th</sup> September 2015, grant of letters of administration intestate respecting his estate was issued to Francis Awori Oluma, (**Petitioner**), in his capacity as the son or grandson of the deceased. The estate comprised of a parcel of land described as Samia/Wakhungu-Odiado/45, which was transmitted to the petitioner on his own behalf and in trust for his children and one Nicholas Ojiambo Ouma as per the certificate of confirmation of grant issued on the 6<sup>th</sup> February 2017.

[2] However, on the 17<sup>th</sup> May 2018, the present application for revocation of the grant was filed by Vitalis Andiege Otiemo (**objector**). It is dated 15<sup>th</sup> May 2018 and was based on the grounds set out in the necessary summons for revocation of grant in that the proceedings to obtain the grant were defective and that the grant was obtained fraudulently and by concealment of material information.

The petitioner opposed the application on the basis of the averments contained in his replying affidavit dated 15<sup>th</sup> November 2015.

[3] The application proceeded by way of affidavit evidence and written submissions. The objector's submissions were filed on 23<sup>rd</sup> September 2021, through **Tim Okwaro & Associates** while those of the petitioner were filed on 20<sup>th</sup> August 2021, through **Balongo & Co. Advocates**.

Having considered the application on the basis of its supporting grounds and those in opposition thereto together with the rival submissions, this court's view with regard to the first supporting ground is that the proceedings leading to the issuance of the impugned grant could not have been defective or irregular on the basis of the previous succession cause involving the same deceased and estate property because it is doubtful whether the grant issued therein was proper and lawful considering that it may have been confirmed by a court without pre-requisite jurisdiction and the grant itself may have been obtained by means of fraudulent activities together with concealment of material facts relating to the death of the deceased and the status of the petitioner as a beneficiary of the estate.

[4] The fact that the petitioner in the previous case, one Gabriel Oyuga Okumu, was charged with a criminal offence pertaining to his obtaining of a grant in the previous case, is a great pointer and evidence enough to establish that the said grant was fraudulently and unlawfully obtained. If therefore, the objector herein purchased a portion of the estate property from the fraudster petitioner, his remedy would lie in a normal civil suit in an action against the said fraudster if not in a criminal case through the police and the office of director of public prosecution (**DPP**).

[5] The factors foregoing clearly indicate that the objector lacks the necessary "*locus standi*" to even file the present application against the petitioner. Neither would he have any "*locus standi*" to bring any other civil action against the estate of the deceased. For this reason alone, this application is devoid of merit and cannot be sustained. This also means that the rest of the grounds in support of the application do not fall for determination by this court. In any event, the objector did not provide sufficient and credible evidence to show that the impugned grant was obtained by the petitioner herein by fraud and concealment of material facts and/or information especially after he discovered and established that the grant previously issued was unlawful inasmuch as it related to the estate of the deceased and purported to confer power to the then petitioner to transmit the estate to himself as a beneficiary.

[6] In sum, the present application in its entirety lacks merit and is hereby dismissed with costs to the petitioner/respondent.

Ordered accordingly.

**J.R. KARANJAH**

**J U D G E**

**[DELIVERED AND SIGNED THIS 5<sup>TH</sup> DAY OF OCTOBER 2021]**