

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

SUCCESSION CAUSE NO.306 OF 2010

IN THE MATTER OF THE ESTATE OF ADUOLI ADEYA (DECEASED)

BETWEEN

FRANCIS NDUBI ODUOLI.....PETITIONER

VERSUS

GEOFREY ADEYA ODUORI.....PROTESTOR

R U L I N G

[1] The deceased, **Aduoli Agoro Adeya**, as per the death certificate passed away on 2nd February 2004, at the age of sixty three (**63**) years. The Chief's letter dated 9th July 2010, indicated that he was survived by seven (**7**) sons, four (**4**) nephews and a brother. The letter also indicated that the deceased was also known as Odudi Agoro. His only asset was a parcel of land described as L.R No.Marachi/Kingandole/205.

[2] On 2nd November 2010, a son of the deceased named Francis Ndubi Oduoli (**petitioner**) filed a petition for letters of administration intestate respecting the estate of the deceased on the **14th March 2011**, the grant was issued to him by the court. However, on the 4th September 2012, an application for revocation of the grant was filed by the deceased's brother, Humphrey Ndubi Agoro and on the 12th April 2019, a similar application was filed by a son of the deceased named, Geoffrey Adeya Oduoli.

[3] The record does not show what happened to the first application by the brother of the deceased, but the second application by the deceased's son came up in court for hearing on 25th September 2019, when the petitioner was ordered to apply for confirmation of the grant within thirty (**30**) days failure to which the grant shall be revoked and the applicant (**Geoffrey Adeya Oduoli**) be issued with a fresh grant.

[4] Indeed, the petitioner filed the necessary application on 25th October 2019, vide the summons for confirmation of grant dated the same day. However, on 9th March 2020, Geoffrey Adeya Oduli (**objector**), filed an affidavit of protest dated 9th March 2020, in which he gives his own proposal on the distribution of the estate property.

[5] The protest was canvassed by way of affidavit evidence and written submissions which were filed on 20th April 2021, by the objector through **Okeyo Ochiel & Co. Advocates**. The petitioner/respondent opted through his advocate, **Mr. Jumba**, not to file written submissions and relied on his affidavits to defend the protest.

[6] Having considered the averments and facts contained in both the supporting affidavits respecting the confirmation of grant and the protest as well as the applicant objector's submissions, it became quite apparent to this court that the main point of departure between the petitioner and the objector relate to the alleged ownership of four (**4**) acres of the estate by the deceased's brother, Humphrey Ndubi Agoro. The objector alleged that he purchased that portion from Humphrey and it should therefore be registered in his name. He contended that the portion was never available for distribution as part of the estate property.

[7] In the petitioner's affidavit in support of confirmation of the grant as proposed therein, the said Humphrey Ndubi Agoro was not included as a beneficiary nor was he mentioned as a co-owner of the estate property.

The objector annexed a copy of a sale agreement between him and Humphrey Ndubi in relation to the estate property. The agreement was executed on 12th March 2013, after the issuance of the material grant on 14th March 2011 and prior to its confirmation. Therefore, Humphrey did not have any valid and legal authority to sell part of the estate property (**if at all**) to the objector. There was no valid evidence that he owned part of the estate property.

[8] Humphrey could therefore not have purported to sell what did not belong to him to the objector. Having done so, he intermeddled with the estate and was not a true beneficiary of the estate of his late brother who was survived by his children and other dependants. In effect, he duped the objector into selling to him property which did not belong to him but his late brother as evidenced by the search certificate dated 15th June 2010, and filed herein on 2nd November 2020.

[9] In the circumstances, the petitioner's application for confirmation of grant, dated 25th October 2019, be and is hereby allowed as prayed. The necessary certificate of confirmation of grant be issued in terms of the mode of distribution prescribed in paragraph (**5**) of the supporting affidavit dated 25th October 2019.

J.R. KARANJAH

J U D G E

[READ AND SIGNED THIS 5TH DAY OF OCTOBER 2021]