



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT HOMA BAY

PROBATE & ADMINISTRATION NO.17 OF 2019

IN THE MATTER OF THE ESTATE OF: JOMO NDIEGE ARODI.....DECEASED

BETWEEN

PEREZ AWUOR LWANDE.....APPLICANT/INTERESTED PARTY

AND

BERNARD OTIENO NDIEGE.....1ST RESPONDENT

KEVIN ODHIAMBO JOMO.....2ND RESPONDENT

RULING

1. Perez Awuor Lwande, the applicant/interested party herein, moved the court by summons for revocation dated 21st October, 2020 under section 76 of the Law of Succession Act, Rules 44 and 73 of Probate and Administration Rules. She is seeking the following orders:

- a) That this application be certified urgent and service be dispensed with in the first instance.[Spent]
- b) That the honorable court be pleased to revoke and/or annul the grant of letters of administration interstate made to Kevin Odhiambo Jomo, the 2nd respondent herein on 20th November, 2019 and confirmed on 30th January, 2020.
- c) That the honorable court be pleased to issue a declaratory order protecting the applicant's rights as an innocent purchaser vis-vis the estate of the late Jomo Ndiege Arodi pursuant to the provisions of section 93 of the Law of Succession Act.
- d) That this honourable court do issue such other orders as the court may deem just and expedient or necessary for the ends of justice or to prevent abuse of the process of the court.
- e) That the costs of the application be provided for.

2. The application was premised on the following grounds:

- a) That the certificate of confirmation of grant issued on 30th January 2020, grants the 1st respondents the right to administer the estate of the deceased for the benefit of persons who are neither children nor the dependents of the deceased.
- b) That the grant of letters of administration and the certificate of confirmation of grant was obtained fraudulently by the making of false statements and concealment from the court of material facts by both the 1st and the 2nd respondents.
- c) That the letters of administration and the certificate of confirmation of /grant was obtained by means of untrue allegations of fact essential to points of law so as to justify the grant.
- d) That the letters of administration and the certificate of confirmation of grant offend the express provisions of section 29 and section 41 of the Law of Succession Act (Cap 160) Laws of Kenya.
- e) That the deliberate making of untrue statements on oath by the respondents is contemptuous and an affront to the dignity of court.

f) That the respondent having come to court to annul or revoke a previous grant, have in a similar vein perpetuated fraud, which conduct should not be decisively and firmly dealt with by the honorable court in order to prevent an abuse of court process and restore the dignity of the court.

g) That it would be grievously unjust and a serious miscarriage of justice for the applicant to be subjected to unnecessary proceedings in the Senior Principal Magistrate's Court Homa Bay, in Land Case NO.33 OF 2020, which conduct of proceedings would further negate the overriding objective principle.

h) That the applicant has a sufficient interest in the matter and is consequently entitled to make this application in accordance with the provisions of Section 76 of the Law of Succession Act.

i) That it is fair and just that the orders prayed herein be issued for the just and proper determination of rights and protection of the law.

3. The respondents opposed the application on grounds that the applicant was not a beneficiary of the estate of the deceased herein.

4. Jomo Ndiege Arodi the deceased herein died on 14th November, 1999. The applicant was not an heir of the said deceased. The applicant's claim is by way of purchase. The agreement made on 19th day of August, 2010 between the applicant's husband and Bernard Otieno Ndiege cannot be enforced against the estate of the deceased. He had no capacity to enter into a contract on behalf of the estate of the deceased.

5. The applicant can only pursue her claim against Bernard Otieno Ndiege in person.

6. I therefore find that the application lacks merit. The same is dismissed with costs to the 2nd respondent. 1st respondent cannot benefit from own mischief.

DELIVERED AND SIGNED AT HOMA BAY THIS 9TH DAY OF NOVEMBER, 2021

KIARIE WAWERU KIARIE

JUDGE