

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

SUCCESSION CAUSE NO.219 OF 2013

NICHOLAS ODANGA MALOBA.....1ST OBJECTOR/APPLICANT

ALFRED CLIWERS MALOBA.....2ND OBJECTOR/APPLICANT

VERSUS

ELEANDRO OKELLO ONDENGAH.....PETITIONER/RESPONDENT

R U L I N G

[1] The grant subject of this objection was issued on 20th August 2013 to Eleandro Okello Ondengah (**petitioner**) to administer and eventually distribute among the rightful beneficiaries the estate of the late Oloo Obwoga (**deceased**) comprising of land parcel Nos.Marachi Esikoma 336 and 337. The record did not show that the grant was ever confirmed for purposes of actual distribution of the estate to the beneficiaries. Nonetheless, on 2nd August 2019, the present application for revocation of the grant was made by Nicholas Odanga Maloba and Alfred Clowers Maloba (**objectors/applicant**) on the basis that the grant was fraudulently obtained by the petitioner who is said to be a stranger and a non-beneficiary of the estate.

[2] The hearing of the application proceeded by way of the affidavit evidence and written submissions. Both parties filed their respective submissions which when viewed together with both the supporting and replying affidavit indicate that the main issue for determination was whether the subject grant was obtained by the petitioner by fraud and/or false representations with regard to his relationship with the deceased. Indeed, a person who obtains a grant respecting the estate of a person to whom he is not related by blood or any other way or has no connection to the estate whatsoever would be acting fraudulently with the intention of depriving the beneficiaries of the estate their rightful inheritance.

It was herein alleged by the objectors that the petitioner, has no blood relations with the deceased nor is he a beneficiary of the deceased's estate in any manner.

[3] In his defence, as may be deciphered from his replying affidavits, the petitioner did not dispute the aforementioned allegation relating to his connection with the deceased or his estate. He merely alleged that the estate property known as Marachi/Esikoma/337 belonged to his late father but was held in trust for him by the deceased father of the objector who owned the property known as Marachi/Esikoma/336.

The petitioner therefore contended that the objectors are only entitled to the property No.336.

The reply by the petitioner did not disprove the allegations made against him by the objectors. This therefore meant that he wrongly and fraudulently obtained the subject grant while he was not related to the deceased in any manner and was in fact a stranger to the deceased's estate. In doing so, the petitioner actually came into conflict with the provisions of **s.76 of the Law of Succession Act**. He alluded to the existence of a trust between the deceased and his late father but did not lead any evidence to prove the fact and perhaps show his linkage with the estate of the deceased.

[4] The petitioner's defence to this application was redily disapproved by the objectors. In any event, the defence was evasive inasmuch as it was based on matters which cannot be raised in a succession dispute but a land dispute. So, if the petitioner has any genuine claim against the estate of the deceased, then he should file a proper civil case in a court with competent jurisdiction. Otherwise, this application is merited and is hereby allowed to the extent that the subject grant be and is hereby revoked together with all consequential orders and/or transaction pertaining to the estate property. The name of the deceased as the owner of the estate shall forthwith be restored and the objectors be at liberty to petition afresh for grants of letters of administration intestate respecting the estate of the deceased to be issued to them or any other rightful beneficiary of the estate in a fresh and separate succession cause.

Both parties shall bear their own costs of the application.

Ordered accordingly.

J.R KARANJAH

J U D G E

[READ & SIGNED THIS 4TH DAY OF NOVEMBER 2021]