



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

(CORAM: CHERERE-J)

SUCCESSION CAUSE NO. 742 OF 2010

IN THE MATTER OF THE ESTATE OF NASHON AJUOGA NYANJIRA (DECEASED)

BETWEEN

KENNEDY ODHIAMBO ANYANGE.....2ND PETITIONER/ OBJECTOR

AND

HESBON SAKWA AJUOGA1ST PETITIONER/RESPONDENT

JUDGMENT

1. NASHON AJUOGA NYANJIRA (*deceased*) died sometimes on 18th August, 1978. His estate comprised of the following assets:

- 1) L.R. NO. Kisumu/Bar/667
- 2) L.R. NO. Kisumu/Bar/690
- 3) L.R. NO. Kisumu/Bar/1020 belonging to the deceased and one ANYANGE AJUOGA
- 4) L.R. NO. Kisumu/Bar/1635

2. On 27th June, 2016, Letters of Administration, were issued jointly to Hesbon Sakwa Ajuoga (**1st Petitioner/Respondent**) and Kennedy Odhiambo Anyange (**Objector/2nd Petitioner**) in their capacity as adopted son and grandson of the deceased respectively.

3. Subsequently, a Certificate of Confirmation of Grant was issued in favour of the Hesbon Sakwa Ajuoga (**1st Petitioner/Respondent**) and Kennedy Odhiambo Anyange (**Objector/2nd Petitioner**) on 11th July, 2016 in the following terms:

- 1) L.R. NO. Kisumu/Bar/1635 to Hesbon Sakwa Ajuoga
- 2) L.R. NO. Kisumu/Bar/1020 to Hesbon Sakwa Ajuoga and Kennedy Odhiambo Anyange to hold in trust for Benard Ochieng Anyange
- 3) L.R. NO. Kisumu/Bar/667 to Kennedy Odhiambo Anyange and Jane Anyango Anyange
- 4) L.R. NO. Kisumu/Bar/690 to Benard Ochieng Anyange and Marcela Achieng Anyange

Application

4. By summons dated 25th June, 2019 filed on even date, the Objector/ 2nd Petitioner prayed for order for revocation of the Letters of Administration and Certificate of Confirmation of Grant issued to him and the 1st Petitioner/Respondent on the ground that the latter made a false statement that he was an adopted son of the deceased.

Objector/Applicant's case

5. The Objector/Applicant stated that deceased who was his grandfather had 3 children namely:

i. **Caleb Anyange Ajuage** (deceased) who was married to Doris Atieno Anyange (also deceased). Their children are:

- Objector/2nd Petitioner
- Benard Ochieng Anyange
- Mercyline Achieng Anyange
- Jane Akoth Anyange

ii. **Gladys Anyango Ajuoga** who is blessed with 4 children

iii. **Benta Akumu Ajuoga** who is not blessed with children

6. The Objector/2nd Petitioner faulted the 2nd Petitioner/Respondent for misrepresenting to court that he was an adopted son of the deceased thereby for distributing part of the deceased's estate to himself thereby disinheriting other beneficiaries. His evidence was buttressed by that of **JOHN JOSEPH OUKO**, who is deceased's nephew.

7. The 1st Petitioner/Respondent filed a response to the application but did not attend the hearing even though he was notified concerning the hearing dates.

Analysis and Determination

8. I have considered the objection vis-à-vis the evidence on record. Section 76 of **the Law of Succession Act (the Act)** provides as follows:

“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion-

(a) that the proceedings to obtain the grant were defective in substance;

(b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;

(c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;

(d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either-

(i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court has ordered or allowed; or

(ii) to proceed diligently with the administration of the estate; or

(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or

(e) that the grant has become useless and inoperative through subsequent circumstances.”

9. It is on record that the deceased had three children, two of whom are still alive. Surprisingly, the Petitioners deliberately concealed this information to court the result of which some beneficiaries were disinherited.

10. From the foregoing, I have come to the conclusion that both Petitioners obtained the Letters of Administration dated 27th June, 2016 and Certificate of Confirmation of Grant issued on 11th July, 2016 fraudulently and by the making of a false statement and by concealment from the court of all the beneficiaries of the deceased.

11. Consequently, I am satisfied that a case has been made out a case for revocation of the Letters of Administration and Certificate of Confirmation of Grant issued in this cause. As a result, it is hereby ordered **THAT:**

a) Letters of Administration dated 27th June, 2016 to HESBON SAKWA AJUOGA and KENNEDY ODHIAMBO ANYANGE are hereby revoked.

b) The subsequent Certificate of Confirmation of Grant issued on 11th July, 2016 to HESBON SAKWA AJUOGA and KENNEDY ODHIAMBO ANYANGE is correspondingly revoked.

c) KENNEDY ODHIAMBO ANYANGE and JOHN JOSEPH OUKO are hereby appointed as the joint administrator of deceased's estate

d) Upon issuance of the Letters of Administration, KENNEDY ODHIAMBO ANYANGE and JOHN JOSEPH OUKO shall within 30 days apply for confirmation of the grant after identifying respective shares of each of the beneficiaries to the estate particularly of Gladys Anyango Ajuoga, Benta Akumu Ajuoga and the children of Caleb Anyange Ajuoga (deceased)

e) The Objector/2nd Petitioner who is as guilty of non-disclosure as the 1st Petitioner/Respondent will bear his own costs of this application

DELIVERED AND SIGNED AT KISUMU THIS 13th DAY OF FEBRUARY 2020

T. W. CHERERE

JUDGE

READ IN OPEN COURT IN THE PRESENCE OF-

Court Assistants - Amondi/Okodoi

For Objector/2nd Petitioner -

For 1st Petitioner/Respondent -