



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT HOMA BAY

SUCCESSION CAUSE NO.14 OF 2019

IN THE MATTER OF THE ESTATE OF:

ODHIAMBO NYAKOI.....DECEASED

AND

MAURICE OKUNGU AYIEKOOBJECTOR/APPLICANT

VERSUS

BERNARD OTIENO AYIEKO.....PETITIONER/RESPONDENT

RULING

[1] The application for revocation of grant dated 12th July 2019, is made on the basis of the grounds set out in the summons for revocation of grant taken out by the applicant/objector, **Maurice Okungu Ayieko**, against the petitioner/respondent, **Bernard Otieno Ayieko**.

The supporting grounds are fortified by the averments in the applicant's supporting affidavit dated 12th July 2019 and are opposed on the basis of the averments in the respondent's replying affidavit dated 17th September 2019 and further affidavit dated 13th February 2020 as well as the affidavit of **Salome Oyoo Adika**, dated 3rd February 2020.

[2] The application was canvassed by way of affidavit evidence and written submissions.

In that regard, the applicant's submissions were filed on his behalf by **Quinter Adoyo & Co. Advocates**, and the respondent's submissions were filed on his behalf by **Moriasi Osoro & Co. Advocates**.

Having given due consideration to the application on the basis of the supporting grounds and the rival submissions, it is apparent that the basic issue for determination is whether the grant issued to the respondent on 16th May 2018 and confirmed on 28th May 2018 at the magistrate's court at Ndhiwa was obtained fraudulent by the making of a false statement or by the concealment from the court of something material to the case as alleged by the applicant/objector.

Indeed, a grant obtained in such manner is amenable to revocation at any time under Section 76 (b) of the Law of Succession Act.

[3] As the relevant record shows, in his petition for letters of Administration Intestate dated 3rd October 2016, the respondent listed two beneficiaries i.e. Himself in his capacity as the brother of the deceased, **Odhiambo Nyakoi**, and **JSO**, in his capacity as the minor son of the deceased. The estate property was described as land parcel **No. Kanyamwa/Kwandiku/**

Kabonyo/1431.

In a further affidavit dated 16th May 2018, in support of the application for confirmation of grant, the respondent proposed that the estate property be wholly transmitted to him to hold in trust for the deceased's minor son.

Indeed, the certificate of confirmation of grant was issued in terms of the proposal.

[4] However the present application was filed herein on 15th July 2019, by the objector younger brother of the respondent. The listed grounds for the application as supported by the facts contained in the respective supporting affidavit indicate that the alleged deceased i.e.

Odhiambo Nyakoi is a non-existent person or a “phantom” and that the estate property is actually the property of the late Samwel Nyakoi Ogago alias Nyakoi Ogago alias Ayieko Ogago, who was a polygamist with two wives and six sons including the applicant and the respondent herein. It is also indicated that a late son of the late Nyakoi Ogago called Joshua Ayieko Ayako alias Odhiambo Ayieko, was the father of the named second beneficiary (i.e. JSO) and was assigned a separate parcel of land (i.e. Kanyamwa/Kabonyo/Kwandiku/1439) by his late father.

In essence, the objection is premised on the fact that the person described herein as the deceased (i.e. Odhiambo Nyakoi) is non-existent. The applicant therefore implies that the respondent made false statements and concealed when he obtained the impugned grant.

[5] It is indeed fraudulent and an abuse of the court process for a person to petition for and obtain a grant of letters of administration for a person who does not exist. The question is whether the applicant has availed cogent and credible evidence to disprove the existence of the person Odhiambo Nyakoi, for whose estate the material grant was issued and confirmed.

The documents accompanying the application for the grant includes a death certificate for the said Odhiambo Nyakoi dated 13th January 2016, a search certificate dated 4th January 2016, showing that the estate property belonged to the said person and a chief’s letter dated 13th June 2016, showing that the person died on 17th February 2013 and was survived by his late wife **Josinter Abich Odhiambo** and one child called JSO, aged seven (7) years at the time and under the guardianship of the respondent herein, brother to the deceased.

[6] Unless the said death certificate was a forgery, it was a confirmation of the existence of the said Odhiambo Nyakoi before his demise on 17th February 2013 and unless the said chief’s letter was a forgery or a false document, it showed that the said Odhiambo Nyakoi was the actual father of JSO. The death certificate dated 1st October 2014 annexed to the applicant’s supporting affidavit refers to the deceased as **Samwel Nyakoi Ogago** and so does the chief’s letter dated 6th November 2018. The two documents were incapable of invalidating the death certificate and chief’s letter relating to the deceased, Odhiambo Nyakoi.

Neither were they capable of disproving the existence of the said Odhiambo Nyakoi.

It would therefore follow that all the allegations made by the applicant with regard to the non-existence of the deceased, Odhiambo Nyakoi, his estate and his actual heirs remained mere allegations wanting in credulity and proof. There is absolutely no evidence to prove that the death certificate respecting the deceased herein is a false or forged document nor is there any evidence to prove likewise the chief’s letter regarding the estate and dependents of the said deceased.

[7] If the applicant/objector held a strong view that the two documents are a product of forgery or even indeed the adjudication record annexed to his supporting affidavit, then the necessary report ought to have been made to the police for proper investigations and probably the arraignment of the culprit in a criminal court.

In sum, the present application is devoid of merit and is hereby dismissed with costs to the respondent.

Ordered accordingly.

J.R. KARANJAH

JUDGE

13.02.2020

[Delivered and signed this 13th day of **February, 2020**]