



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT HOMA BAY

MISC. SUCCESSION CAUSE NO.749 OF 2015

FORMERLY HOMA BAY SUCC. CAUSE NO.131 OF 2004

IN THE MATTER OF THE ESTATE OF:

SAMWEL ODOYO CHWANYA.....DECEASED

AND

PERES OJIEM ODOYO.....1ST APPLICANT

PESILA NYAMGUTU ODOYO.....2ND APPLICANT

VERSUS

DAVID OKUKU ODOYO.....RESPONDENT

RULING

[1] This court did not have the benefit of perusing and digesting the proceedings relating to this matter from its inception or about the year 2004, upto the time the original file went missing either by accident or design. This ruling is therefore generated from copies of the available documents and pleadings used to construct this skeleton file in terms of the order made herein on 18th July 2019 which copies were availed by the parties through their respective legal representatives.

A perusal of the documents and pleading clearly indicate that the present dispute relates to the estate of the late **Samwel Odoyo Chwanya** (deceased) and is traceable to the grant of letters of administration Intestate issued to **David Okuku Odoyo** and **Ludia Anyango Odoyo** (petitioners) in respect of the estate on **3rd August 2004** in **Homa Bay SRM Succession Case No.131 of 2004** and was confirmed rather belatedly on **29th December 2010**. There is also indication that the second petitioner, Ludia Anyango Odoyo, is since deceased.

[2] Both petitioners were also listed as beneficiaries of the estate together with **Peres Ojiem Odoyo** and **Pesila Nyamgutu Odoyo** (applicants) who are the first and second widows of the deceased respectively and who later sought to have the grant and the ensuing certificate of confirmation of grant revoked. In that regard, they filed the present summons for revocation of grant dated 6th July 2012, based on the grounds set out in the summons as supported by the averments of the first applicant (**Peres**) in her affidavit dated 11th July 2012.

The application was apparently opposed by the first petitioner/ respondent (David) on the basis of the averments contained in his replying affidavit dated 25th July 2012.

[3] From the applicant's statements dated 28th November 2016, the estate property comprised several parcels of land including LR No. Kanyada/Kanyabala/3333, Plot No.1432/178, Plot No.1432/1/2 and Plot No.1432/197.

In his replying affidavit, the first petitioner indicated that the late second petitioner was also a widow of the deceased and that she passed away on the 24th April 2010. He therefore remained as the sole administrator of the estate. He further indicated that the deceased was polygamous and had nine wives who all bore him a total of forty-three children.

Most significantly, the first petitioner did not actually oppose the applicants' application to have the impugned grant and certificate of confirmation revoked and/or annulled. Instead, he prayed for this court's order for issuance of a fresh grant to him and the second applicant (Pesila) among other orders. (See paragraph 10 of the first petitioner's/respondent's replying affidavit dated 25th July 2012).

[4] In as much as the application was not substantially opposed by the first petitioner/respondent, the need to further proceed with this matter did not arise and the matter ought to have been resolved years back before the disappearance of the original file. And with the death of the second petitioner coupled with the disagreements between the surviving administrator/petitioner and a section of the beneficiaries particularly, the surviving widows of the deceased, it is doubtful whether the grant is actually operational or whether there is proper and lawful administration of the estate.

It would therefore be in the interest of all the parties that the impugned grant and the certificate of confirmation of grant dated 3rd August 2004 and 29th December 2010 be revoked forthwith to pave way for the issuance of a fresh grant and to prevent or prevent further abuse of the court process by either parties.

[5] In that regard, the impugned grant and certificate of confirmation of grant be and are hereby revoked and a fresh grant be issued forthwith to the two applicants **Peres Ojiem Odoyo** and **Pesila Anyango Odoyo** together with the petitioner/respondent, **David Okuku Odoyo**.

Further, the ownership of the estate's immovable property particularly the suit property shall revert to the name of the deceased, **Samwel Odoyo Chwanya**, to facilitate a fresh and proper distribution of the estate and the taking out of a fresh summons for confirmation of grant within the next six (6) months from this date hereof or any shorter period that the parties may agree.

Each party shall bear their own costs of the application.

Ordered accordingly.

J.R. KARANJAH

JUDGE

12.02.2020

[Delivered and signed this 12th day of **February, 2020**]