



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT HOMA BAY**

**SUCCESSION CAUSE NO.142 OF 2015**

**IN THE MATTER OF THE ESTATE OF: ANDITI NYAONGO OUKO.....DECEASED**

**AND**

**JOSEPH OGONDA OLUOCH.....APPLICANT/OBJECTOR**

**VERSUS**

**HELLEN ATIENO OWINO.....1<sup>ST</sup> RESPONDENT/PETITIONER**

**CHARLES ONYANGO MIGOT.....2<sup>ND</sup> RESPONDENT/PETITIONER**

**RULING**

1. In its ruling of the 7<sup>th</sup> March 2019, this court revoked the grant of letters of administration issued and confirmed in favour of **Hellen Atieno Owino** and **Charles Onyango Migot** on the 4<sup>th</sup> March 2016, respecting the estate of Anditi Nyaongo (deceased) comprising of a parcel of land described as **L.R. GEM/KAWUOR/KOTIENO/1094**.

Pursuant to the revocation, the court ordered that a fresh grant do issue in favour of Hellen Atieno Owino and three surviving children of the deceased and be confirmed after the expiry of six (6) months or any shorter period that the parties may deem necessary.

Accordingly, the four administrators filed necessary summons for confirmation of grant dated 3<sup>rd</sup> May 2019. However, an affidavit of protest dated 14<sup>th</sup> June 2019 was filed by **Joseph Ogonda Oluoch** (Applicant/Objector). His protest is directed at the mode of distribution of the estate proposed by the administrators indicating that the entire estate of the deceased be transmitted to the first administrators, the rest of the administrators having surrendered their respective shares to her.

2. In his affidavit of protest, the objector refers to and is more concerned with the portion of land described as **Gem/Kawuor-Kotieno/1095**, yet from the very beginning of this whole matter the only property availed for distribution and was indeed listed as the only asset of the deceased was the portion of land described as Gem/Kawuor/Kotieno/1094 which was a sub-division of the property previously known as **Plot No.369**.

All the grants earlier issued in this court referred to the said Gem/Kawuor/Kotieno/1094 and not Gem/Kawuor-Kotieno/1095.

In fact, the revoked certificate of confirmation of grant dated 4<sup>th</sup> May 2016, clearly shows that parcel No.Gem/Kawuor/Kotieno/1094 was the sole property availed for distribution.

3. Whether or not, land parcel No.Gem/Kawuor/Kotieno/1095, belonged to the deceased, the fact remains that it was not included and availed for distribution in this succession cause and cannot therefore be the asset or one of the assets contemplated in the impugned summons for confirmation of grant dated 3<sup>rd</sup> May 2019. If there exists a dispute over the said parcel of land between the administrators and the objector, the forum to resolve the dispute is not this succession cause but the Environment and Land Court.

It would therefore follow that the protest insofar as it relates to parcel No.Gem/Kawuor/Kotieno/1095 is devoid of merit as the concern and the subject of distribution in the administrators' protest summons for confirmation of grant is parcel No.Gem/Kawuor/Kotieno/1094.

In the circumstances, the grant issued on the orders of this court on 7<sup>th</sup> March 2019, is hereby confirmed to the extent that the first administrator, Hellen Atieno Owino, shall have parcel No.Gem/Kawuor/Kotieno/1094, wholly transmitted to her.

For the avoidance of doubt, parcel No.Gem/Kawuor/Kotieno/1095 was not included as part of the estate of the deceased available for distribution and should therefore not be included in the ensuing certificate of confirmation of grant.

Ordered accordingly.

**J.R. KARANJAH**

**JUDGE**

**05.02.2020**

**[Delivered and dated this 5<sup>th</sup> day of February, 2020]**