



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT HOMA BAY**

**SUCCESSION CAUSE NO.78 OF 2014**

**IN THE MATTER OF THE ESTATE OF:**

**MATHEW OMOLLO OYOYO alias MATHEW OYOYO..... DECEASED**

**AND**

**NICHOLAS OMONDI ORONDO.....APPLICANT/OBJECTOR**

**VERSUS**

**WALTER OYOYO OUKO.....1<sup>ST</sup> RESPONDENT/PETITIONER**

**MARK OKORI OTIENO.....2<sup>ND</sup> RESPONDENT/PETITIONER**

**RULING**

[1] By a ruling of this court made on the 12<sup>th</sup> February 2019, the grant of letters of administration Intestate issued to **Walter Oyoyo Ouko** and **Mark Okori Otieno**, on the 17<sup>th</sup> December, 2014, respecting the estate of Mathews Omollo Oyoyo alias Mathew Oyoyo (deceased) was revoked together with the ensuing certificate of confirmation of grant dated 9<sup>th</sup> March 2016, with an order that a fresh grant do issue in favour of Walter Oyoyo Ouko and **Nicholas Omondi Orondo** and be confirmed within six (6) months from that date or any shorter period that the parties may deem necessary.

Accordingly, on the 20<sup>th</sup> June 2019, an application for confirmation of grant was presented vide summons for confirmation of grant dated 10<sup>th</sup> April 2019. However, an affidavit of protest to the summons dated 21<sup>st</sup> August 2019, was filed on 22<sup>nd</sup> August 2019 by **Margret Achieng Oyoyo**, in her capacity as an alleged beneficiary of the deceased's estate.

A second affidavit of protest dated 9<sup>th</sup> September 2019, was filed on 18<sup>th</sup> September 2019, by Walter Oyoyo Ouko, who is the first administrator and applicant in the impugned summons for confirmation even though the affidavit in support of the summons was deponed by his co-administrator/applicant; Nicholas Omondi Orondo.

[2] It seems that the two administrators did not sit down and agree on the distribution of the estate to all the beneficiaries. This explains the reason for the protest by the first administrator and implies that the application for confirmation of the grant was rather pre-mature and was made without consensus of all the beneficiaries.

The first protest by Margret confirms the lack of consensus inasmuch as she alleges that she is excluded from the distribution of the estate alongside other daughters of the deceased.

[3] For all the foregoing reasons, both protests are merited and are hereby upheld with the result that the impugned summons for confirmation of grant be held in abeyance until such time that the administrators and indeed all beneficiaries of the estate shall agree on a mode of distribution which shall take into account all the identified beneficiaries, be they male or female. In that regard, the period within which an agreement must be reached in order to facilitate the issuance of the necessary certificate of confirmation of grant be and is hereby limited to four (4) months from this date hereof. In default, it shall be deemed that the current crop of administrators have failed in their duty of distributing the estate and could thus be removed as such and be replaced by new administrator or be enjoined with an additional two administrators to fastrack and facilitate proper distribution of the estate among the identified beneficiaries.

Ordered accordingly.

**J.R. KARANJAH**

**JUDGE**

**05.02.2020**

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