



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISUMU**

**SUCCESSION CAUSE NO. 84 OF 2000**

**IN THE MATTER OF THE ESTATE OF**

**OWINO NYAGOL AHIJA (DECEASED)**

**AND**

**IN THE MATTER OF AN APPLICATION FOR A GRANT OF LETTERS OF ADMINISTRATION**

**INTESTATE BY JASON OYOLA OPENDA**

**AND**

**IN THE MATTER OF AN APPLICATION FOR REVOCATION OF GRANT BY**

**FREDRICK JUMA ALHIJA & SAUL OTIENO AHIJA**

**JASON OYOLA OPENDA.....PETITIONER/RESPONDENT**

**VERSUS**

**FREDRICK JUMA AHIJA.....1<sup>ST</sup> OBJECTOR APPLICANT**

**SAUL OTIENO AHIJA.....2<sup>ND</sup> OBJECTOR/APPLICANT**

**RULING**

The application before me seeks the revocation of the Grant of Letters of Administration Intestate, which were issued on 4<sup>th</sup> October 2002.

1. The Applicants, **FREDRICK JUMA AHIJA** and **SAUL OTIENO AHIJA** are both biological children of the deceased, **OWINO NYAGOL AHIJA**.

2. It is their case that the Petitioner, who is the Respondent to this application was an inter-meddler in the Estate of the deceased, as he was neither a member of the family of the deceased nor a relative of the deceased.

3. It is common ground that the Petitioner took out a Citation dated 22<sup>nd</sup> February 2002.

4. In the said citation, the Petitioner, **JASON OYOLA OPENDA**, named eight (8) citees, as follows;

**1. OMONDI KANUNDU OWINO**

**2. MARY ODONGO ODINO**

**3. ROSEBELA AGOLA OWINO**

**4. OMONDI OWINO**

**5. SAUL OWINO**

**6. HAMAN OGALO OWINO**

**7. JUMA OWINO**

**8. OTIENO OWINO**

5. It does appear that none of the citees took out Letters of Administration in respect to the Estate of the deceased.

6. Subsequently, the court issued a Grant of Letters of Administration Intestate to the Petitioner, on 4<sup>th</sup> October 2002.

7. It was the Applicant's case that within 2 weeks, from the date of issuance of the Letters of Administration, the Petitioner had caused the transfer of a parcel of land from the name of the deceased, to his name.

8. The said transfer was described as illegal, as it had been done without any lawful authority.

9. In any event, the Applicants believe that even the original letters of administration ought not to have been issued to the Petitioner, because he had concealed material facts from the court, and also because he had failed to disclose some material facts.

10. The Applicants were of the view that the Petitioner was not, and could not be said to be a person entitled to a grant of the letters of administration. That view is premised on the fact that the Petitioner was not a member of the family of the deceased, nor had he bought the property from the deceased, nor was the deceased indebted to him.

11. Whilst it is true that the Petitioner had not asserted that he had either bought property from the deceased or that the deceased was indebted to him, I hold the considered view that there is no fixed category or categories of person(s) who were entitled to apply for letters of administration.

12. Any person who considers himself as entitled to make the application, may proceed to do so. However, there is no guarantee that each such application will be granted.

13. It is the responsibility of the Court to determine whether or not to grant letters of administration. And when making that determination, the court is enjoined to exercise its authority judiciously.

14. In this case, the Applicants have demonstrated, through the Certificate of Death, that the deceased, **OWINO AHIJA NYAGOL**, died on 13<sup>th</sup> December 1999.

15. In the citation, the Petitioner herein had indicated that the deceased died on 20<sup>th</sup> December 1989.

16. Similarly, in the Affidavit of Verification of the proposed citation, the Petitioner herein reiterated that the deceased died on 20<sup>th</sup> December 1989.

17. The Petitioner has submitted that the said mis-statement was not fraudulent.

18. By dint of the provisions of **Section 76** of the **Law of Succession Act**, a Grant may be revoked if, inter alia, it was obtained fraudulently by making of a false statement.

19. The statement itself need not be deemed fraudulent.

20. If the statement is false, the Petitioner may, depending on the circumstances of the case, be deemed to have used such statement to fraudulently obtain the grant.

21. In this case, the Petitioner has deponed, in his replying affidavit about the fact that, **OWINO NYAGOL AHIJA**, (the deceased) filed **LAND DISPUTE CASE NO.SYA/237/97** in the year 1997. That case had been filed against **OPENDA OMOTO & FAMILY**.

22. On 12<sup>th</sup> June 1998 the Tribunal dismissed the case because the Objector, Openda Omoto was deceased.

23. I have highlighted those facts because they demonstrate that the Petitioner herein was well aware that even as late as June 1998, the deceased, Owino Nyagol Ahija, was very much alive.

24. Therefore, when the Petitioner swore an affidavit in which he said that the deceased died in 1989, I hold the view that that cannot be construed as a minor error.

25. The Petitioner has not tendered any explanation why he had, in the citation, stated that the deceased died 10 years earlier than the actual date of death.

26. There is no doubt that the Petitioner made a false statement in the Citation and also in the verifying affidavit.

27. The Applicants said that the citation was never served upon them.

28. The Petitioner has not made any efforts to satisfy this court that the Applicants were served. Instead, the Petitioner simply said that the Applicants ought to have made an application to set aside the citation proceedings.

29. In the absence of an answer to the Applicants' contention, I find that they were not served with the Citation.

30. Most significantly, the Petitioner has failed to provide any explanation about how the property in issue, being **L.R. NO. SOUTH SAKWA/MIGWENA/897**, was transferred to him.

31. In the affidavit of verification, which was sworn on 21<sup>st</sup> February 2000, the Petitioner said;

**“3. THAT before his death the said**

***Owino Nyagol Ahija held a Certificate***

***to Land Parcel No. South Sakwa/***

***Migwena/897 jointly with me under***

***disputed circumstances, which***

***resulted in the filing of Kisumu***

***HCCC No. 179/06 and 293/96 both***

***of which have not been finalized.”***

32. If that disposition is accurate, it means that the Petitioner was well aware of the pending suits, pitting him against Owino Nyagol Ahija.

33. That would imply that until those suits were determined, the issue of the ownership of the said property remained unresolved.

34. At paragraph 7 of the verifying affidavit, the Petitioner said the reason why he wished to be allowed to take out the letters of administration was that it would enable him;

**“..... Substitute them as the Defendants**

***in KISUMU HCCC NO.179/96 and 293/96..”***

35. The Applicants have provided this court with a copy of a Land Certificate which shows that on 17<sup>th</sup> October 2002, **L.R. NO. SOUTH SAKWA MIGWENA/897** was transferred to the Petitioner.

36. By 17<sup>th</sup> October 2002 the two cases **HCCC NO. 179/96** and **HCCC NO. 295/96** had not yet been determined. That means that the dispute pitting the Petitioner against Owino Nyagol Ahija was still pending.

37. Secondly, it was not until 18<sup>th</sup> January 2019 that the Petitioner filed a Summons for Confirmation of Grant. In the said application, the Petitioner made it clear that one of the grounds for seeking confirmation of the Grant which had been issued on 4<sup>th</sup> October 2002 was;

**“1. THAT it is a legal requirement that**

***precedes transfer of the Estate to***

***the beneficiaries.”***

38. Clearly, the Petitioner was aware that the confirmation of a Grant precedes the transfer of the property constituting the Estate of a deceased person.

39. Notwithstanding that understanding of the legal position, the Petitioner tendered no explanation about how **L.R. NO. SOUTH SAKWA/MIGWENA/897** was transferred to his name on 17<sup>th</sup> October 2002.

40. I find that the said transfer was irregular and unlawful. Therefore, I order that the said property shall, forthwith revert to the name or names of the proprietor(s), as was the position prior to it being transferred to the Petitioner.

41. I further find that because the Petitioner had misused the Grant of Letters of Administration Intestate, by causing the transfer of the property to his name, justice demands that the said Grant be revoked forthwith, in order to safeguard the Estate of the deceased.

42. The Petitioner is directed to surrender the Land Certificate for **LR. NO. SOUTH SAKWA/MIGWENA/897**, which is in his name, so that the same should be cancelled. He is ordered to do so within the next **SEVEN (7) DAYS**.

43. The costs of the Summons for Revocation of Grant are awarded to the Applicants.

44. Finally, for the avoidance of any doubt, I wish to make it clear that this Ruling does not purport to constitute a determination of the issue concerning the ownership of the property **LR. SOUTH SAKWA/MIGWENA/897**.

**DATED, SIGNED at DELIVERED at KISUMU**

**This 15<sup>th</sup> day of April 2020**

**FRED A. OCHIENG**

**JUDGE**