



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

PROBATE & ADMINISTRATION NO.75 OF 2010

IN THE MATTER OF THE ESTATE OF: MARTH ELADI OBELAI..... DECEASED

BETWEEN

ASARE VINCENT ELADI PETITIONER/ RESPONDENT

AND

LEAH MIDESHA KABURU.....OBJECTOR/APPLICANT

RULING

1. The objector/applicant herein moved the court by way of summons for revocation or annulment of grant dated 29th June 2015 under section 76 of the Law of succession Act and Rule 44(1) of Probate and Succession Rules. She is seeking the following orders:

- a. That the grant of letters of administration issued on 6th July 2010 to Asare Vincent Eladi and subsequently confirmed on 16th June 2011 be revoked and or annulled.
- b. That a fresh grant of letters of administration be issued in the joint names of Asare Vincent Eladi and Leah Midesha Kaburu.
- c. That entry No.2 made on title No. SOUTH TESO/AMUKURA/1692 by which the petitioner/respondent got registered as owner of the above land parcel by transmission be cancelled.
- d. That the costs of this application be borne by the petitioner/respondent.

2. The application is premised on the following grounds:

- a. That the proceedings to obtain the grant were defective in substance;
- b. That the grant was obtained fraudulently by making of a false statement or by concealment from court of material facts;
- c. That the petitioner/respondent has not proceeded with the administration of the estate diligently; and
- d. That the objector/applicant has been left out yet she is a beneficiary of the estate.

3. The petitioner/respondent did not file any response or submissions in spite of service.

4. When I perused form P. & A. 5, the petitioner/respondent described himself as the only beneficiary who survived the deceased herein. A letter that was issued by the acting chief Amukura location dated 22nd March 2010 listed the following as having survived the deceased herein:

- a. Vincent Eladi Asare;
- b. Crescent Ouma Eladi;

c. Peter Obelai Eladi;

d. Moses Arakit Eladi; and

e. Alimor Justus Eladi.

5. I have considered the evidence affidavits filed herein and the submissions by the objector. I am therefore satisfied that the grant herein was obtained by concealment of material facts relevant to the case.

6. I am making an order to for revocation of the grant that was issued to Vincent Eladi Asare and which was subsequently confirmed. I am further making an order that entry No.2 made on title No. SOUTH TESO/AMUKURA/1692 by which the petitioner/respondent got registered as owner of the above land parcel by transmission be cancelled.

7. Consequently to the foregoing, I am appointing Asare Vincent Eladi and Leah Midesha Kaburu as co-administrators of the estate of the deceased.

8. The two co-administrators must file a proposal for distribution of the estate within 60 days failure to do so, this grant will be automatically revoked unless extension of time has been sought and granted.

9. Since the petitioner/respondent is guilty of concealment, he shall bear the costs.

DELIVERED and SIGNED at BUSIA this 8th day of April, 2020

KIARIE WAWERU KIARIE

JUDGE