



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BUSIA**

**PROBATE & ADMINISTRATION NO.266 OF 2012**

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

**REUBEN OURETEN OMADEDE.....DECEASED**

**BETWEEN**

**JONATHAN OMUSE OMADEDE ..... PETITIONER/ RESPONDENT**

**AND**

**LAWI OMADEDE.....OBJECTOR/APPLICANT**

**ZAKAYO EKIRAPA .....PROTESTOR**

**RULING**

1. The objector/applicant herein moved the court by way of summons for revocation or annulment of grant dated 25<sup>th</sup> February 2014 under section 76 of the Law of succession Act and Rule 44(1) of Probate and Succession Rules. He is seeking the following orders:

- a) That the grant of letters of administration issued on 13<sup>th</sup> February 2014 to Jonathan Omuse be revoked and or annulled.
- b) That all subsequent orders arising from and incidental to the said grant including the confirmation be nullified and set aside.
- c) That the costs of this application be borne by the petitioner/respondent herein.

2. The application is premised on the following grounds:

- a) That the institution of these Succession proceedings was deliberately concealed from the applicant/objector;
- b) That the grant was obtained fraudulently by making of a false statement or by concealment from court of material facts;
- c) That the purchaser of the entire estate of the deceased herein was never included in this succession cause and the action by the petitioner /respondent was deliberate;
- d) That the petitioner/respondent herein as the administrator of the estate of the deceased's estate failed to diligently and honestly administer the deceased's estate;
- e) That it is only fair and just if the interests of the purchaser of the deceased's estate herein is put into consideration to ensure full, fair administration thereof;
- f) That the grant as it is and the subsequent certificate of confirmation if issued is incapable of the proper operation without consideration of the purchaser's interest in the estate mentioned above;
- g) That the applicant/objector is the elder brother to both the deceased herein Reuben Omadede and the petitioner/respondent and makes this application as such; and
- h) That in any event prior to the filing of this cause there existed a previous Probate cause namely Busia HCP & A. No. 252 of 2012 made and applied for by Taidora Amonyait Omadede who is also deceased and was a widow to the deceased herein and ranked in

priority in administering the deceased's estate.

3. The petitioner/respondent opposed the application on grounds that:

a) That the deceased herein and his widow did not sell any land to the protestor;

b) That the witnesses who testified about the sale deliberately misled the court.

4. I have perused the evidence affidavits, attached documents filed herein as well the oral evidence that was adduced and the following facts emerge:

a) That Reuben Oureten Omadede the deceased whose estate is contested and Taidora Amonyait Omadede, his widow, died without any issue.

b) That at the time of their deaths, the land parcel No. NORTH TESO/ ANGURAI 292 had been sold to Zakayo Achilu Ekirapa. There was sufficient documentary evidence to this effect. The petitioner cannot be allowed to feign ignorance.

5. Upon my perusal of High Court Probate and Administration file No. 252 of 2012, I noted that the petitioner therein is Taidora Amonyait Omadede and the petition was in respect of the estate of Reuben Oureten Omadede. The petitioner in this matter acted mischievously and it is clear he was prompted by selfishness. We cannot have two files in respect of the same estate.

6. I find the application merited. The grant issued on 13<sup>th</sup> February 2014 to Jonathan Omuse is hereby revoked together with any consequential orders. The objector herein is appointed administrator of the estate of the deceased. I also make and order that High Court Probate and Administration file No. 252 of 2012 be consolidated with this file.

7. The costs of this application to be borne by the petitioner/respondent.

**DELIVERED and SIGNED at BUSIA this 8<sup>th</sup> day of April, 2020**

**KIARIE WAWERU KIARIE**

**JUDGE**