



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT HOMA BAY

SUCCESSION CAUSE NO.71 OF 2013

IN THE MATTER OF THE ESTATE OF:

GEORGE OMUNGU OSODO.....DECEASED

AND

CAPIS ADUOGO OMOLLO.....OBJECTOR/APPLICANT

VERSUS

AGNES ATIENO OMUNGO.....1ST PETITIONER/RESPONDENT

JOEL OSODO OMOLLO.....2ND PETITIONER/RESPONDENT

AND

SAMUEL OKOTH ONYANGO.....INTENDED INTERESTED PARTY

RULING

[1] The deceased **GEORGE OMUNGU OSODO**, died on the 5th July 1999 at the age of fifty seven (57) years. The chief's letter dated 28th October 2013 indicated that he was survived by three widows namely, Pamela Onditi, Agnes Atieno and Grace Akinyi, together with ten children – four of whom were minors i.e. WA, SA, GO and DO. The rest were adults and included, Capis Aduogo, Joel Osodo, Boaz Ochieng, Wycliffe Ochieng, Lillian Akoth and Stephen Otieno.

The second widow, Agnes Atieno, and the second son, Joel Osodo, petitioned for grant of letters of administration intestate respecting the estate of the deceased comprising of a parcel of land described as **No. Lambwe/East/7**.

After the necessary prerequisites, the grant was issued by this court on the 2nd April 2014 and was confirmed on 18th December 2014 to the effect that the three widows of the deceased were to equally share the estate property at 1.0 acres each and were to hold the remaining 7.7 acres of the property in equal shares for nine of the children of the deceased. The only child left out was WA.

[2] All seemed to have gone well in the distribution and ultimate transmission of the estate to the beneficiaries.

However, on the **26th June 2015**, one of the beneficiaries i.e Capis Aduogo Omollo (herein - applicant/objector) through the firm of **OCHOKI & CO. ADVOCATES**, purportedly filed a summons for

revocation and annulment of the grant in which one **SAMUEL OKECH ONYANGO**, was joined as an Interested Party in his capacity as a purchaser of part of the estate property from the administrators/

petitioners, Agnes Atieno and Joel Osodo (herein – petitioners/ respondents).

Although the objectors summons are for the revocation and/or annulment of the grant issued to the respondents, the orders sought do not include the most important order for revocation of the grant and by extension the certificate of confirmation of the grant.

Ironically, the orders sought herein are essentially injunctive orders against the respondents and an order for them to render accounts in

respect of the estate property.

[3] For the avoidance of doubt, the following are the actual orders sought against the respondents and the interested party in the material summons for revocation of grant i.e.

[1] **The instant application be certified urgent and same be heard ex-parte in the first instance.**

[2] **Samuel Okech Onyango be joined as an interested party herein.**

[3] **Pending the hearing and determination of the application herein, the honourable court be pleased to issue a prohibitory order of injunction and/or conservatory order restraining the respondent from further disposing off, alienating, further subdividing and/or selling all those parcels of land known as Lambwe/East/2293 and 2294.**

[4] **Pending the hearing and determination of the objection herein, the honourable court be pleased to issue a prohibitory order of injunction and/or conservatory order restraining the respondent from further disposing off, alienating, further subdividing and/or selling all those parcels of land known as Lambwe/East/2293 and 2294.**

[5] **The register in respect of LR No. Lambwe/East/2293 and 2294 be rectified and the names of the respondent and interested party be deleted therefrom and same to revert to the name of George Omungu Osodo, the deceased person herein.**

[6] **The respondent herein do tender accounts in respect of the estate of George Omungu Osodo, the deceased person herein, more particular the amount from the sale of the land.**

[7] **Costs of this application be borne by the respondent.**

[8] **Such further and/or other orders be made as the honourable court may deem fit and expedient.**

[4] Even in the grounds in support of the application contained in the body of the summons and in the applicant's supporting affidavit dated 26th June 2015, there is no prayer or request for revocation of the grant.

All this means that this is more of a land dispute than a succession dispute which has since been determined and the estate of the deceased transmitted accordingly. The estate is in essence spent and there is nothing left for distribution.

If there was anything left out inadvertently, the solution lay in the taking out of summons for rectification of grant by an aggrieved party rather than to have the grant revoked all together under **Section 76** of the **Law of Succession Act**.

In any event, the circumstances arising herein do not place this matter under the ambit of the said provision of the Act.

Any act committed by the respondents after the distribution and transmission of the estate to the beneficiaries and which act is perceived to be unlawful, would be good **"fodder"** for civil proceedings for damages and/or injunctive orders against the respondents and/or the interested party.

[5] In fact, the proceedings which started on 15th February 2017 and ended on 9th May 2018 before this court, differently constituted, more or less related to a land dispute rather than a succession dispute pitting the objector and the respondents on one hand and the objector and the interested party on the other hand.

The court was clearly taken on a wild goose chase by the objector on the pretext that it was dealing with a proper application for revocation of grant, yet it was all along being asked to undo what was seemingly a successful succession cause and intertwine it with a land dispute arising after lawful transmission of the estate of the deceased to the beneficiaries including the objector and the respondents.

The interested party was merely an innocent purchaser of part of the distributed estate property for value.

[6] In spite of all the foregoing, the objector in his closing submissions addressed the court as if he was praying for a revocation of grant among other orders and most interestingly, beseeched this court to revoke the grant.

The respondents took over and also proceeded as if they were dealing with an application for revocation of grant.

In sum, the summons for revocation of grant dated 26th June 2015, was not only fatally defective but also misconceived as this court cannot grant orders which were not sought by the objector and may not have the necessary jurisdiction to grant orders which may touch on ownership of land and related matters – in view of **Article 162 (2) (b)** of the **Constitution**.

The present application is therefore dismissed with costs to the respondents and interested party.

Ordered accordingly.

J.R. KARANJAH

JUDGE

15.05.2019

[Read and signed this 15th day of **May, 2019**].