



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

PROBATE & ADMINISTRATION NO.49 OF 2003

IN THE MATTER OF THE ESTATE OF:

BENEAH ODIEMO.....DECEASED

BETWEEN

ESTHER AOKO ODIEMO.....PETITIONER/ RESPONDENT

AND

MOSES JUMA OUMA.....OBJECTOR/APPLICANT

RULING

1. The objector/applicant herein moved the court by way of summons for revocation or annulment of grant filed in court on 3rd August 2015 under sections 76 & 83(d) 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 to Esther Aoko Odiemo be revoked and or annulled.
- b) 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 petitioner/respondent deliberately left out the name of the objector/applicant; and
- c) That the petitioner concealed vital information which could have lured [sic] the objector/applicant to detect the process of succession.

3. The application was opposed on grounds that:

- a) The applicant lacks capacity to contest the grant herein;
- b) If the applicant has any claim, his redress lies in the Environment and Land Court.

4. I have perused the record herein and it was not disputed that there was a land dispute in Busia Senior Resident Magistrate's Court No.26 of 2002. The applicant in that case was Beneah Ouma and the respondent was Priscillah T. Kenga. One of the orders was:

That the respondent Pricilla Taka Kenga and her son Moses be given 3 acres from parcel No. 600 in addition to family land No. Bukhayo/Matayos/42.

This is the basis on which this application has been brought before the court.

5. The applicant has contended that this order was not complied with and yet there was no appeal against it. The respondent averred that these orders were not complied with. Indeed she confirms the applicant's contention.

6. I am therefore revoking the grant that was confirmed on 4th November 2008. Consequently the objector and the petitioner are made co-administrators herein.

7. I am making an order that the petitioner/respondent file a proposal for distribution that will factor in the order issued in Busia Senior Resident Magistrate's Court No.26 of 2002 within 30 days. Failure to do so, the objector to be at liberty to file his proposal after the expiry of the 30 days.

8. It is abundantly clear that the petitioner/respondent acted fraudulently. She will bear the costs of this application.

DELIVERED and SIGNED at BUSIA this 3rd day of June, 2020

KIARIE WAWERU KIARIE

JUDGE