



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT BUSIA**

**PROBATE & ADMINISTRATION NO.104 OF 2015**

**IN THE MATTER OF THE ESTATE OF: PETER GABRIEL ONYANGO AKILEO..... DECEASED**

**BETWEEN**

**VINCENT GARDIUS ONYANGO**

**FRANCIS OKUMU.....PETITIONERS/RESPONDENTS**

**AND**

**ERNEST ODHIAMBO.....OBJECTOR/APPLICANT**

**RULING**

1. Ernest Odhiambo the objector/applicant herein moved the court by way of summons for revocation or annulment of grant dated 8<sup>th</sup> March 2018 under section 76 (b) of the Law of Succession Act and Rule 73 of Probate and Administration Rules. He is seeking the following order:

That this honourable court be pleased to revoke or annul the certificate of confirmation of grant issued to the petitioners/respondents on the 27<sup>th</sup> February 2017 in respect to the deceased's estate.

2. The application is premised on the following grounds:

- a) That the suit land parcel No. Bunyala/Mudembi/1735 does not form part of the estate of the deceased;
- b) That the petitioners/respondents while petitioning for the grant of letters of administration in respect of the deceased's estate concealed vital material facts to the court;
- c) That the petitioners/respondents concealed that there is Busia H.C E.L.C No. 139 of 2013 pending for hearing and determination between the objector and the deceased in respect of ownership of suit land parcel No. Bunyala/Mudembi/1735;
- d) That the objector/applicant was not aware of this succession cause until when substitution of the deceased by the second petitioner/respondent was made in Busia H.C E.L.C No. 139 of 2013; and
- e) That the objector/applicant and his family have been living on the said parcel of land since their childhood and have erected their homesteads on the said parcel of land No. Bunyala/Mudembi/1735.

3. The application was opposed on the following grounds:

- a) That it is misconceived and lacks merit;
- b) That the application is belated and an afterthought; and
- c) That the application lacks good grounds to warrant the orders sought.

4. On the 10<sup>th</sup> March 2020, the parties informed the court they had agreed to dispose of the application by way of written submissions. Both

parties complied.

5. Upon my perusal of the submissions, and the replying affidavit as well as the record, the following facts emerge:

- a) That there has been a long drawn dispute in respect of land parcel No. Bunyala/Mudembi/1735 pitting the objector's family against that of the petitioners;
- b) That there were pronouncements in favour of the objector/applicant herein; and
- c) That there is a pending suit over the dispute of ownership of the said parcel of land.

6. When this succession cause was file or at any stage, the petitioners concealed from the court the fact that there was an existing dispute yet to be resolved. This is a material fact which if disclosed, the court could not have confirmed the grant.

7. Section 76 (b) of the Law of Succession Act provides as follows:

**A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—**

**(b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;**

8. From the foregoing, the grant herein is revoked confirmation will have to await the outcome in Busia H.C E.L.C No. 139 of 2013.

9. Costs shall be borne by the respondents.

**DELIVERED and SIGNED at BUSIA this 11<sup>th</sup> day of November, 2020**

**KIARIE WAWERU KIARIE**

**JUDGE**