



REPUBLIC OF KENYA

IN THE HIGH COURT

AT HOMA BAY

SUCCESSION CAUSE NO. 15 OF 2019

IN THE MATTER OF THE ESTATE OF: PAUL AMOLLO ONJIKO (DECEASED)

AND

JOHN OJUNGA OLUOCH.....APPLICANT

RULING

1. The summons for **revocation** or annulment of grant dated 10th July 2017 was taken out by **Regina Akeyo Otieno** (Objector) through the firm of Messrs **Migai & Co. Advocates**, against the Petitioner /respondent **John Ojunga Oluoch**, for orders that the grant of letters of administration issued to the respondent on 22nd December, 2015 be revoked and a fresh grant be issued to the objector. The grounds for the application are set out in the body of the summons and supported by the averments contained in the objector's supporting affidavit deponed on the 10th July 2019. The respondents opposed the application on the basis of the averments contained in the replying affidavit deponed by him on 16th December, 2019.

2. Pursuant to the directions given by trial court on the 24th September, 2019 the application was heard by way of "viva-voice" evidence. Both parties were further directed to file necessary affidavits and/or witness statements and they accordingly complied.

Oral evidence in support of the application was led by the objector (**PW1**) and her witness, **Thomas Otieno Odero (PW2)**. The respondent(**DW1**) led evidence in opposition to the application and called a witness, **Maurice Okumu Ojwang(DW2)**.

From the evidence in its totality as well as the grounds in support of the application, the issue emerging for determination is whether the impugned grant were obtained fraudulently by false representations and/or concealment of material facts and/or information on the part of the respondent/petitioner.

3. Under **Section 76(b)** of the **Law of Succession Act (Cap 160 LOK)**, a grant of letters of administration may be revoked and/or annulled by the court if it was obtained fraudulently by the making of a false statement out by the concealment from the court something material to the case.

The contention by the objector was that the deceased **Paul Amolo Onjiko** was survived by the objector as his only biological child. That, the respondent is the son of one **Luoch**(deceased), the son of **Barnabas Oreta** brother to the deceased.

The objector therefore implied that the respondent was a grand child of the deceased and ought not have petitioned for the grant without her knowledge nor did he have a first priority over her to apply for the grant.

A nephew of the deceased(**PW2**) confirmed as much.

4. The respondent(**DW1**) did not deny that he was actually a grand son or great grand son of the deceased but contended that the deceased was married to the late **Angeline Auma Nyoloo**, with whom he did not have any children. That, upon the death of the deceased's said wife, he(respondent), at the request of the deceased, went to live with and assist the deceased at his homestead from the year 1997 upto the time of the death of the deceased in the year 2001.

The respondent thus implied that the deceased treated him as his only child thereby giving him the capacity to petition for grant of letters of Administration respecting the estate of the deceased and to the exclusion of any other person. He further contended that the objector is not related to the deceased as alleged and that she is a stranger to the estate of the deceased.

5. The respondent's uncle(**DW2**) confirmed that the father of the respondent was **Lameck Oluoch**, a neighbor rather than a brother of his(**DW2**). He also confirmed that he was not related to the deceased and that the deceased was married to Angeline Auma with whom he

had children who are not known to him(DW2). He said that the objector was not known to him.

6. In essence, the foregoing evidence from both the objector and the respondent confirmed that the deceased was married to the late Angeline and contrary to what the respondent said, the union was blessed with children including the objector who was known or unknown to the neighbor of the deceased and as at the time of his death. No evidence was led by the respondent to dispute the fact that she (Objector) was actually biological daughter of the deceased and sole heir to his estate. The evidence showed that the respondent's linkage to the deceased, if any, was remote as confirmed with that of the objector who therefore stood first in priority over him in petitioning for the impugned grant.

The fact that the grant was obtained by the respondent without the knowledge and/or consent of the objector was a clear demonstration of his dishonesty in filing this succession cause aimed at disinherit the objector who was the rightful heir.

7. It would follow that all the information given by the respondent in prompting the issuance of the impugned grant by the court was bound on falsehood and concealment of material facts pertaining to the true and actual beneficiaries of the estate of the deceased. If indeed, the deceased treated the respondent as his own son, then perhaps he would have derived the necessary capacity to petition for the grant, but not without the knowledge, consent or approval of the objector. However, there was no substantial and credible evidence from the respondent to prove and/or establish the alleged relationship. So, it was not open for him to apply for and obtain the grant to the exclusion of the objector. If anything, he would have waited for the objector to apply for the grant and then come up with an application for necessary provision as a dependant of the deceased.

7. For all the foregoing reasons, this court finds that the present application is merited and is hereby allowed and granted to the extent that the grant of letters of administration intestate issued to the respondent on 22nd October, 2015 together with its certificate of confirmation of grant issued and dated on 6th May 2016, be and are hereby revoked and a fresh grant be issued forthwith in the name of the objector and necessary summons for confirmation of grant be later taken out within the prescribed period of six(6) months.

Any transactions undertaken on the strength of the previous grant and certification of confirmation of grant be treated as having been null and void "as initio" and the name of the deceased be reinstated as the proper and lawful owner of the material estate property being Land Parcel No. **GEM/KANYANJWA A/52, No. GEM/KANYANJWA A/91 and No.GEM/KANYANJWA A/1069.**

Ordered accordingly.

[Delivered and Signed this 3rd Day of December, 2020]

J.R. KARANJAH

JUDGE