



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT HOMA BAY

SUCCESSION CAUSE NO.78 OF 2014

IN THE MATTER OF THE ESTATE OF:

MATHEW OMOLO OYOYO alias MATHEW OYOYO.....DECEASED

AND

NICHOLAS OMONDI ORONDO.....APPLICANT/OBJECTOR

VERSUS

WALTER OYOYO OUKO.....1ST RESPONDENT/PETITIONER

MARK OKORI OTIENO.....2ND RESPONDENT/PETITIONER

RULING

[1] The summons for revocation or annulment of grant dated 29th March 2016, was taken out by **NICHOLAS OMONDI ORONDO** (Objector), against **WALTER OYOYO OUKO** and **MARK OKORI OTIENO** (respondents) as the administrators of the estate of the late **MATHEW OMOLLO OYOYO**, who passed away on the 20th August 2005 at the age of ninety (90) years as per the relevant death certificate.

Nine years or thereabout after the death of the deceased, the respondents in the year 2014 petitioned the court for necessary grant of letters of administration respecting the estate of the deceased which comprised several parcels of land described as **Kanyada/K/Katuma⁷A⁷/1600,1606, 1194, 1336 and 1081**.

The court considered the petition on the basis of the information given by the respondent and issued grant of letters of administration intestate in favour of the respondent on 17th December 2014. The grant was subsequently confirmed on 9th March 2016.

[2] A few days after the confirmation, the objector applied for the revocation of the grant and the certificate of confirmation of grant vide the present summons for revocation of grant which contains a supporting affidavit deponed on the 29th March 2016.

It was this affidavit and a supplementary affidavit dated 2nd February 2017, that the objector relied on in prosecuting the application which was opposed by the respondents vide the grounds contained in a replying affidavit deponed by the first respondent, **WALTER OYOYO OUKO**, on 26th April 2016.

Oral evidence was also adduced by both parties at the hearing of the summons.

In that regard, the applicant, (**PW1**) testified and called five (5) witnesses including, **GEORGE ODHIAMBO ORONDO** (**PW2**), **JACKTON AWUOR ONDIALO** (**PW3**), **DISMAS NGODE ACHIENG** (**PW4**), **THOMAS OTENGA OYOYO** (**PW5**) and **LUKE OWINO SAO** (**PW6**).

For the respondents, the first respondent (**DW1**) testified along with **PAUL OPONDO ACHIENG** (**DW2**).

[3] Written submissions were thereafter filed by the applicant through Messrs. **G.S. Okoth & Company Advocates** and the respondents through Messrs. **Nyauke & Company Advocates**.

From the evidence and the rival submissions it was not disputed that both the applicant and the respondent have family roots traceable to the deceased **MATHEW OMOLO OYOYO** or **MATHEW OYOYO** either directly or indirectly but specifically through the deceased's mother **NYOGULA NYAMBET** who had another son called **VINCENT ORONDO MINIAMBO** born out of her association with one **Miniambo Kula** who "inherited" her after the death of her husband, **OYOYO ODHIAMBO**, in accordance with Luo Customary Practices.

VINCENT ORONDO MINIAMBO was thus a step-brother to the deceased **MATHEW OMOLO OYOYO** and his children were treatable as grandsons of the deceased's wife **NYAGULA NYAMBET** and could therefore inherit the deceased's property through her. One such grandson was the objector herein but could not inherit the property of the deceased in priority to the surviving sons and daughters of the deceased. In the degree of consanguinity, he fell below the children of the deceased with **NYAGULA NYAMBET**.

[4] The evidence of the objector as supported by his brother **GEORGE ODHIAMBO ORONDO (PW2)** credibly indicated that they were excluded as beneficiaries in the estate of the deceased whose mother was also their grandmother. They also indicated without dispute from the respondents that they (respondents) are also grandsons of the deceased as their fathers were children of the deceased through their common grandmother.

The first respondent's father is said to be **JOSEPH OMOLLO** while the second respondent's father is said to be **MICHEAL OTIENO**.

Both were sons of the deceased and appear to have been alive at the time the impugned grant was issued.

THOMAS OTENGA OYOYO (PW5) revealed that the deceased was also his father through his first wife known as **BELDINA ODHIAMBO**, who according to **LUKE OWINO (PW6)** was also the mother of **JOSEPH OMOLLO**, father to the first respondent, who disowned the objector as a member of the family of the deceased but was not supported in that regard by his witness **PAUL OPONDO (DW2)**.

[5] It was thus clearly established in evidence that the objector and the respondents are grandsons of the deceased's wife **NYOGULA NYAMBET**. They were therefore beneficiaries of the estate of the deceased through their fathers, sons to **NYOGULA NYAMBET** and all ought to have been included as such in the petition for grant of letters of administration made by the respondents who ought not have taken preference to administer the estate of the deceased given that the deceased was survived by some of his sons including fathers of the respondents.

In the circumstances, **Section 66** of the **Law of Succession Act** was most applicable but was clearly not adhered to such that a number of beneficiaries were not disclosed in the petition for grant. This had the effect of disinheriting them and in particular the family of **VINCENT ORONDO**, son to **NYOGULA NYAMBET** with the inheritor **MINIAMBO KULA**.

[6] It would therefore follow that the respondents in their petition for grant of letters of administration respecting the estate of their grandfather gave false information and/or concealed material facts contrary to **Section 76 (b) and (c)** of the **Law of Succession Act**.

The present application is thus allowed to the extent that the grant dated 17th December 2014 and the certificate of confirmation of grant dated 9th March 2016 both issued in favour of the respondents be and are hereby revoked.

Incidental to the revocation, any transaction undertaken on the strength of the grant and the subsequent confirmation thereof becomes null and void ab in-tio with the result that the titles to the estate revert to the deceased pending fresh distribution of the estate amongst all beneficiaries.

Further, there shall forthwith issue a fresh grant in the name of the first respondent (**WALTER OYOYO OUKO**) and the objector/applicant (**NICHOLAS OMONDI ORONDO**) which may be confirmed within six (6) months from the date hereof or any shorter period that the parties may deem necessary.

Each party shall bear own costs of the application. Ordered accordingly.

J.R. KARANJAH

JUDGE

12.02.2019

[Read and signed this 12th day of February, 2019]