



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT HOMA BAY

SUCCESSION CAUSE NO.15 OF 2018

IN THE MATTER OF THE ESTATE OF:

JOPHETH OGANYO OUKO alias NDHIWA OUKO.....DECEASED

AND

**IN THE MATTER OF APPLICATION FOR REVOCATION OF GRANT OF LETTERS OF ADMINISTRATION ISSUED IN
SUCC. CAUSE NO.14 OF 2017**

BETWEEN

JOSEPH OBUNGA OUKO..... APPLICANT

AND

MOSES ODOYO NDHIWA.....RESPONDENT

RULING

[1] The summons for revocation and annulment of grant of letters of administration dated 16th August 2018, was taken out by **JOSEPH OBUNGA OUKO** (applicant/objector) against **MOSES ODOYO NDHIWA** (respondent/petitioner) through the firm of **G.S. OKOTH & CO. ADVOCATES**.

The summons seeks the revocation of the grant of letters of administration issued to the respondent respecting the estate of the late **JOPHETH OGANYO OUKO** also known as **NDHIWA OUKO**, in Succession cause No.14 of 2017 at the Chief Magistrate's Court in Homa Bay.

However, a copy of the grant annexed to the affidavit in support of the summons shows that the grant was issued to the respondent respecting the estate of one **NDHIWA OUKO** alias **JOPHETH OGANYO OUKO**. Apparently, the applicant took out summons for rectification of grant dated 10th July 2018, on realizing that there was confusion and uncertainty with regard to the name of the deceased. It is however, unclear whether the summons were prosecuted and orders granted accordingly.

[2] Nonetheless, the impugned grant was confirmed on 19th February 2018, in favour of the respondent and two other beneficiaries i.e. **SAMUEL OUKO ONYONGO** and **PAMELA AOKO NDHIWA**. They were to share equally the estate parcel of land described as **No.Kanyada/Kotieno Katuma”A”/1360**.

There was a second grant issued on 9th November 2018 in favour of the applicant in Succession Case No.36 of 2017 at the Chief Magistrate's Court in Homa Bay. This grant was also in respect of the same estate and appears not to have been confirmed meaning that the succession case No.36 of 2017 is incomplete whereas succession cause No.14 of 2017 is complete and was so completed with the distribution of the estate property among the named beneficiaries.

The two files were not called for and were never availed before this court at the hearing of the present summons for revocation of grant which hearing proceeded by way of written submissions.

[3] In that regard, the applicant was represented by learned counsel, **M/s Nyarige**, acting on instructions from **G.S. OKOTH & CO. ADVOCATES**, while the respondent appeared in person.

Upon due consideration of the rival submissions and all the affidavits of the parties for and against the application, this court must first and

foremost point out that the fact that two succession causes for the same estate were instituted separately by both the applicant and the respondent in the Chief Magistrate’s Court at Homa Bay, was a clear reflection of abuse of the court process by one of them, most likely, the applicant, considering that his application came after the respondent’s application for grant had been filed and granted on the 12th July 2017. His (applicant’s) application was granted later on the 9th November 2017, and he must have misled the court into granting the letters of administration knowing that there was already in existence another grant of letters of administration issued to the respondent. For that reason, his application herein to revoke his grant is allowed. Thus, the grant dated 9th November 2017, issued to the applicant be and is hereby revoked forthwith.

[4] As for the grant dated 12th July 2017 and the subsequent certificate of confirmation of the grant dated 19th February 2018, both issued to the respondent; the basic issue for determination is whether the applicant has established to the satisfaction of the court and on a balance of probability any of the grounds for revocation or annulment of grant as stipulated in **Section 76** of the **Law of Succession Act (Cap160 Laws of Kenya)** and in particular **Section 76 (d) and (e)**.

It is the applicant’s contention that the respondent, in applying for the impugned grant acted contrary to the provisions of **Section 76 (d) and (e)** of the **Act**, which provide that:

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

(a) that the proceedings to obtain the grant were defective in substance;

(b) -----

(c) -----

(d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either –

(i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or

(ii) to proceed diligently with the administration of the estate; or

(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or

(e) that the grant has become useless and inoperative through subsequent circumstances.

[5] **Sub-section (d) and (e)** were the enabling provisions relied on by the applicant in bringing this application. Therefore, the points for determination ought to have revolved around these two provisions of **Section 76** of the **Act**. Therefore, the points for determination as framed by the applicant in his written submissions are misconceived and do not show in what manner the respondent has acted contrary to **sub-sections (d) and (e)** or even **(a)** of **Section 76** of the **Law of Succession Act**. Consequently, this application for revocation of the grant issued to the respondent is without merit and is hereby dismissed.

In any event if the applicant was listed as a beneficiary in the petition for grant by the respondent, he ought to have raised his issues at the hearing of the summons for confirmation of grant taken out by the respondent. The fact that those issues were raised in the present application is a clear indication that the application was an afterthought after all. There was no basis for the grant of the orders sought herein by the applicant hitherto, in relation to **sub-section (d) and (e)** of the main **Section 76** of the **Succession Act**.

[6] The application is thus dismissed with each party bearing their own costs.

J.R. KARANJAH

JUDGE

05.02.2019

[Read and signed this 5th day of February, 2019].