



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT HOMA BAY

SUCCESSION CAUSE NO.142 OF 2015

IN THE MATTER OF THE ESTATE OF:

ANDITI NYAONGO.....DECEASED

AND

JOSEPH OGONDA OLUOCH.....OBJECTOR

VERSUS

HELLEN ATIENO OWINO.....1ST PETITIONER

CHARLES ONYANGO MIGOT.....2ND PETITIONER

RULING

[1] The application dated 21st October 2016, made by the applicant/objector, **JOSEPH OGONDA OLUOCH**, against the respondents/petitioners, **HELLEN ATIENO OWINO** and **CHARLES ONYANGO MIGOT**, seeks an order for revocation of the grant issued to the petitioner on 4th May 2016, for reasons that it was obtained fraudulently by the making of false statement and concealment of material facts or by means of an untrue allegation of facts essential in point of law to justify the grant or that the petitioners have acted fraudulently and apportioned or alienated part of the deceased's estate to buyers and without consideration of the other beneficiaries.

[2] Further reasons and/or grounds for the application are by way of the averments contained in the applicant's supporting affidavit dated 21st October 2016. These are however, opposed on the basis of the facts contained in a replying affidavit deposed by the first respondent/petitioner dated 6th January 2017.

Directions were given by this court on the 23rd October 2018, that the application be heard by way of affidavit evidence and in that regard, both parties filed their respective submissions through **Nyauke & Co. Advocates**, acting for the petitioners and **G.S. Okoth & Co. Advocates**, acting for the applicant.

[3] Having considered the application on the basis of the supporting grounds and submissions and in the light of the opposing grounds and submissions, it was apparent that the basic issue for determination was whether the impugned grant was obtained fraudulently and/or by concealment of material facts.

Section 76 of the **Law of Succession Act** provides for circumstances which may lead to revocation or annulment of a grant. This application is grounded more on **sub-section (b)** and **(c)** of the **Provision**. In that regard, the applicant contends that some of the beneficiaries were excluded from the grant and in particular a son of the deceased called **MBOM** and two daughters of the deceased i.e. **SALINE AKINYI** and **ANYANGO ANDITI** all of whom are said to be alive.

The applicant also contended that being the son of his departed mother **DOMTILLA ATIENO**, who purchased part of the estate property from the deceased, he had an interest in the estate but was excluded as a beneficiary. He further contended that the deceased's estate comprised of two parcels of land i.e. **GEM/KOWUOR-KOTIENO Nos 1094** and **No.95** but there was no disclosure that parcel No.1095 was sold to the applicant's mother. Yet it was a sub-division of the original title No.**Gem/Kowuor-Kotieno/369** belonging to the deceased.

[4] In her replying affidavit, the first respondent contends that the applicant is neither a dependant nor beneficiary of the estate of the deceased and if anything, his claims are based on a contract of sale of land, hence invalid.

The first respondent is therefore saying that the impugned grant was properly and lawfully issued to her on the basis of the truthful and correct statements made by her without any concealment of material facts.

[5] From the record, it is apparent that the petition for the grant was filed in the year 2015, by the first respondent in her capacity as the daughter-in-law of the deceased **ANDITI NYAONGO**. She listed herself as the sole beneficiary and on obtaining the grant on the 22nd September 2015, she filed the necessary application for confirmation of grant vide the summons dated 7th April 2016 and filed in court on 15th April 2016. Prior to that, she appeared in court on 6th April 2016 for confirmation of grant but this was not to happen as the court became aware that she had two children and directed her to provide an additional administrator.

In that regard, the first petitioner filed a further affidavit dated 7th April 2016, in which the second petitioner, **CHARLES ONYANGO MIGOT**, was included as a co-administrator.

[6] On 15th April 2016, when both petitioners appeared in court, the grant dated 22nd September 2015 was revoked and a fresh grant in both their names was made and confirmed on the same day. It was formally issued on 4th May 2016 together with the certificate for confirmation of grant.

The only listed asset was a portion of land described as **L.R. Gem/Kawuor/Kotieno/1094**, which was transmitted to the first petitioner in part and jointly in part to both petitioners to hold on behalf of the minors **Charles Omondi** and **Junior Onyango**. It was also the sole asset listed in the petition for grant.

In the first petitioner's further affidavit dated 7th April 2016, the second petitioner was co-opted as an administrator but there was no indication of his relationship with the deceased. This meant that he was haphazardly picked by the first petitioner and introduced as a beneficiary of the estate yet he was a total stranger.

[7] The emergence of two children at the time of the confirmation of the grant meant that they were also dependants and/or beneficiaries to the estate of the deceased but were not included as such in the petition for the grant. Instead, the first petitioner listed herself as the sole beneficiary only to later bring in a stranger in the person of the second petitioner as another beneficiary.

To worsen the situation, after the issuance of the fresh grant and its certificate of confirmation of grant on the 4th May 2016, the second petitioner filed a supplementary affidavit dated 21st September 2016 in which he disclosed the existing of a second parcel of land belonging to the deceased being parcel number **Gem/K/Kotieno/1095**, which he wanted to have it registered in his name seemingly by a second confirmation of the grant.

[8] In an answer to that supplementary affidavit, the first petitioner filed a further supplementary affidavit dated 11th November 2016, in which she "**spilt the beans**" about the second petitioner. She confirmed that she picked him from nowhere and co-opted him into the administration of the estate of the deceased yet he was only a clan chairman and thought to be a cousin of the deceased but not a beneficiary of his estate. She accused him of deponing a fraudulent affidavit and being a deceitful person of questionable character who ought to be replaced as a co-administrator by a person called Peter Owaro Oda. She desired that the deceased's second parcel of land (i.e. plot No.1095) be registered in her name.

[9] In her quest to "**shred**" the second petitioner, into pieces and expose him as an imposter, the first petitioner went further in exposing the unlawful if not fraudulent manner in which the impugned grant was obtained. She clearly indicated that she failed to name or list all those entitled to benefit from the estate of the deceased and instead included wrong people like the second petitioner.

Even in the attempt to bring in another co-administrator, the first petitioner made no attempts to disclose the relationship (if any) between the proposed new administrator and the deceased. He appears to be another person picked from nowhere in order to intrude the estate of the deceased which now comprised two parcels of land and not one parcel of land as indicated in the petition for grant.

[10] There can be no doubt that the first petitioner in applying for the grant made false statements and concealed material facts. She was not candid in her application and this explains the dispute emerging between herself and the co-administrator after the issuance and confirmation of grant on the 4th May 2016.

It would therefore follow that the contention by the objector that she was not the sole beneficiary of the estate of the deceased may just as well be sustained by this court after hearing. That the deceased was survived by four children i.e. **SALINE AKINYI**, **MBOM ANDITI**, **SAMWEL OWINO (deceased)** and **ANYANGO ANDITI** and after the death of her husband (**SAMWEL OWINO**) the first petitioner became a fifth beneficiary being the daughter in-law of the deceased.

The objector also indicated that he was also a beneficiary as his late mother **DOMTILLA ATIENO**, was a purchaser of part of the deceased's estate.

[11] It is quite clear that the first petitioner either knowingly or unknowingly abused the process of the court and managed to obtain the impugned grant only to find herself in headwinds which ignited several unnecessary court motions which would have been avoided if only she was candid in the entire process.

For all the foregoing reasons, this court is satisfied that the impugned grant was improperly obtained and that the proceedings to obtain it were defective in substance.

Consequently, the present objection is sustained with orders that the grant of letters of administration and the certificate of confirmation of grant both issued on 4th May 2015 be and are hereby revoked forthwith. There shall issue a fresh grant in the names of the first petitioner and the three surviving children of the deceased which shall be confirmed after the expiry of six (6) months from this date hereof or any

shorter period that the parties may deem necessary.

For the avoidance of doubt the three surviving children of the deceased disclosed herein are **SALINE AKINYI, MBOM ANDITI** and **ANYANGO ANDITI**.

Ordered accordingly.

J.R. KARANJAH

JUDGE

07.03.2019

[Read and signed this 7th day of **March, 2019**].