



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT HOMA BAY**  
**SUCCESSION CAUSE NO.5 OF 2017**  
**FORMERLY KISUMU HC SUCC. NO.1240 OF 2014**

IN THE MATTER OF THE ESTATE OF:

JOHN ODEMBO OGORO.....DECEASED

AND

PENINA ANYANGO ODEMBO.....OBJECTOR/APPLICANT

VERSUS

MANAS ODOYO ODEMBO.....PETITIONER/RESPONDENT

**RULING**

[1] The demise of the late **JOHN ODEMBO OGORO** also known as **JOHN ODERO OGOI** (deceased) on the 7<sup>th</sup> May 1998, prompted the petitioner, **MANAS ODOYO ODEMBO**, to apply for necessary grant of letters of administration respecting the estate of the deceased.

In the petition for the grant, the petitioner listed the late widow of the deceased as the beneficiary together with her sons, the petitioner and **Paul Okinyi Odembo**.

The only asset available for distribution was a parcel of land described as **Kasgunga/Kamreri/727**.

[2] The High Court at Kisumu issued the grant on the 23<sup>rd</sup> March 2015 and subsequently confirmed it on the 26<sup>th</sup> April 2016 with the estate property being wholly transmitted to the petitioner.

However, the present application vide a summons for revocation or annulment of grant dated 16<sup>th</sup> November 2016 and filed herein on 23<sup>rd</sup> November 2016, was made by **PENINA ANYANGO ODEMBO** (objector/applicant) in her capacity as one of the deceased's three (3) wives and on the main ground that the grant was obtained fraudulently by misrepresentations and concealment of material facts.

The application as supported by the averments in the objector's supporting affidavit dated 16<sup>th</sup> November 2016 and was opposed by the petitioner on the basis of the grounds contained in his replying affidavit dated 6<sup>th</sup> February 2017.

[3] On the 8<sup>th</sup> February 2017, this matter was transferred to this court from the high court at Kisumu and on the 6<sup>th</sup> June 2018, this court directed that the application be canvassed by affidavit evidence. In that regard, the objector filed her submissions through **Veronica Migai & Co. Advocates**, while the petitioner did so through **Amos O. Oyuko & Co. Advocates**.

[4] Having given due consideration to the application on the basis of the supporting grounds and those in opposition thereto as well as the rival submissions, it became apparent to this court that the basic issue for determination was whether the impugned grant was obtained by unlawful means and concealment of material facts.

**Section 76** of the **Law of Succession** indeed provides for instances where a grant of letter of administration may be revoked by the court. These include where a grant is obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case.

[5] Herein, the objector through her supporting affidavit disclosed that the deceased was survived by three widows and a total of fourteen (14) children. The late first wife had four children including the petitioner, the second wife was the objector with a total of five children and

the late third wife also had five children including Paul Okinyi Odembo.

It was further disclosed that the petitioner never sought the consent of the entire family to apply for the grant and proceeded to devolve the entire estate to himself as the only beneficiary.

He thereafter made efforts to dispose of the property to third parties and that this was what alerted the other beneficiaries to become aware of the grant.

The objector contended that the chief's letter dated 29<sup>th</sup> July 2014, used by the petitioner to obtain the grant was untruthful with regard to the actual dependants of the deceased and was in any event, disowned by the same chief in his letter dated 22<sup>nd</sup> November 2016.

[6] The petitioner's reply to the objector's allegations and/or disclosures did not offer a substantial rebuttal or denial of the same. Indeed, the petitioner confirmed that the deceased had more than one wife and according to him they were only two and these did not include the objector. He contended that the objector was a stranger to the estate of the deceased as she was never a wife of the deceased. He was however, unable to disprove the alleged marital relationship between the objector and the deceased.

[7] The court record clearly shows that the petitioner was not candid when he applied for the grant. He failed to disclose that his late father had more than one wife and several children. He held himself up as the beneficiary of the estate together with **Paul Okinyi Odembo**, whom it has now been disclosed is a son of the third wife, of the deceased and the petitioner's step brother. He thus excluded others as beneficiaries of the estate with a clear intention of disinheriting them. He actually disinherited the other listed beneficiary by allocating the whole estate to himself.

The fact that the chief disowned the letter used by the petitioner to obtain the grant implied that the said letter was a false document.

[8] From all the foregoing, it is clear that the impugned grant was obtained by fraud and concealment of material facts. The present objection is hereby sustained with the result that the grant of letter of administration issued to the petitioner on the 23<sup>rd</sup> March 2015 and confirmed on 26<sup>th</sup> April 2016, be and is hereby revoked. A fresh grant shall forthwith issue in the name of the objector, the petitioner and **PAUL OKINYI ODEMBO** as representatives of each of the three houses of the deceased. The grant must be confirmed after the expiry of six (6) months from this date hereof or any shorter period that the parties may deem necessary.

Ordered accordingly.

**J.R. KARANJAH**

**JUDGE**

**07.03.2019**

[Read and signed this 7<sup>th</sup> day of **March, 2019**].