



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT HOMA BAY

SICCESSION CAUSE NO.122 OF 2016

IN THE MATTER OF THE ESTATE OF:

MORRIS AYANY BUNDE.....DECEASED

VERSUS

JOHN OGUTU BUNDE..... APPLICANT/OBJECTOR

AND

SUSLIA OCHIENG AYANY..... RESPONDENT

RULING

[1] Upon his death, **MORRIS AYANY BUNDE** (deceased), was survived by his two widows, **SUSLIA OCHIENG AYANY** and **RODA ATIENO AYANY** and a total of eleven (11) children.

While seven (7) children belonged to Suslia, the remaining four (4) belonged to Roda. They were all beneficiaries of the estate of the deceased which comprised a portion of land described as **Kanyamwa/K/Kwandiku/520**.

The first widow (Suslia) petitioned the court for grant of letters of administration intestate and this was issued on **12th July 2016**.

[2] However, the summons for revocation of the grant was filed herein on 19th September 2016, by **John Ogutu Bunde** (Applicant/Objector) on the main ground that the grant was obtained by fraudulently making false statement and by concealment of material facts.

The applicant it may be noted was not listed as one of the beneficiaries in the petition for grant. He also filed an application vide a Notice of Motion dated 31st January 2017, to restrain the petitioner (**Suslia Ochieng Ayany**) from dealing in any manner with the estate property.

The record does not point to the notice of motion as having been heard and determined.

[3] Nonetheless, by a general power of attorney filed herein on 27th March 2017 the objector appointed **Gabriel Ojwang Ogutu**, to act in his place in this succession cause. In that regard, **Gabriel** prosecuted the summons for revocation of grant by oral evidence and called three (3) witnesses Viz: - **EMMANUEL OBUNGA ACHIENG (PW2)**, **CASIANES MINUDI OYOKO (PW3)** and **JOHANNES OGADA OWUOR (PW4)**.

The petitioner adduced oral evidence in her defence but did not call any witness.

[4] **Section 76** of the **Law of Succession Act**, provides for revocation or annulment of grant in given circumstances on application by any interested party or of the court's own motion.

It was towards that end, that the objector filed the present application whose main ground is that the grant was obtained by the making of false statements and concealment of material facts on the part of the petitioner.

In that regard, the objector through his son **Gabriel (PW1)** testified that the false statement alluded to was that it was stated that he (objector) was a son to the deceased. Yet they were brothers and the deceased was in fact his eldest brother and the two were previously involved in a land dispute over ancestral land which allegedly belonged to their father but was allegedly registered in the name of the deceased to hold in trust for his siblings including the objector.

[5] According to **Emmanuel** (PW2), the land in dispute was actually the subject estate property i.e. parcel **No. Kanyamwa/K/Kwandiku/520** (suit land) and it belonged to the father of both the deceased (Morris) and the objector but was registered in the name of the deceased in 1975 so that he could share it with his brothers. This is what was also indicated in the evidence by **Casianes** (PW3) and **Johannes** (PW4). However, **Casianes** (PW3) referred to a different portion of land with the number 517.

[6] The import of the objector's evidence was that he was omitted as a beneficiary of the estate of the deceased which had been held in trust by the deceased for his own benefit and that of his brothers. He contended that he was entitled to a share of the suit property as it belonged to their father but was registered in the name of the deceased for him to hold in trust for his benefit and that of his brothers including himself (objector).

But, in her evidence, the petitioner (DW1) disputed the contention and vehemently denied that the suit property was held in trust by the deceased for the benefit of the objectors and others. She contended that the property belonged to the deceased and that the objector has his own land. She thus implied that the objector was not a rightful beneficiary of the deceased estate and contended that his application to revoke the grant was ill-motivated.

[7] In that regard, the petitioner exhibited two search certificates dated 6th February 2017 (**D. Exhibit 1 & 2**) to demonstrate that the suit property belonged to the deceased while property No.517 which is not a subject of this cause belonged to the objector.

No other document was availed by the objector to discredit and invalidate the two search certificates nor the petitioner's testimony.

It would therefore follow that the objector has failed to establish any of the circumstances stipulated in **Section 76** of the **Succession Act** for revocation or annulment of grant. The objector's case therefore remained unproved even on the balance of probabilities.

[8] In the end result, this court must find and hold that the objector's application to revoke the grant issued to the petitioner is lacking in merit and is hereby dismissed with costs.

The petitioner is thus at liberty to take out necessary summons for confirmation of grant without further delay.

Ordered accordingly.

J.R. KARANJAH

JUDGE

05.03.2019

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