



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT HOMA BAY**

**SUCCESSION CAUSE NO.778 OF 2014**

**IN THE MATTER OF THE ESTATE OF: SILVESTER OCHAM OKECH....DECEASED**

**AND**

**IN THE MATTER OF REVOCATION/ANNULMENT OF GRANT OF  
LETTERS OF ADMINISTRATION BY JACOB ONYANGO OCHAM**

**BETWEEN**

**MICHAEL OKOTH OGOYE.....OBJECTOR/APPLICANT**

**VERSUS**

**JACOB ONYANGO OCHAM.....PETITIONER/RESPONDENT**

**RULING**

[1] Vide summons for revocation and annulment of grant dated 31<sup>st</sup> October 2018, the applicant/objector, **MICHAEL OKOTH OGOYE**, seeks orders that the grant of letters of administration issued to the petitioner/respondent, **JACOB ONYANGO OCHAM**, on the 19<sup>th</sup> June 2012, be revoked and/or annulled and that he be made an administrator of the estate of the late **SILVESTER OCHAM OKECH**.

The application is made on the basis of the grounds on the body of the appropriate summons as fortified by the applicant's averments in the supporting affidavit dated 31<sup>st</sup> October 2018, and further affidavit dated 29<sup>th</sup> November 2018.

The petitioner opposed the application on the basis of the averments contained in his replying affidavit dated 28<sup>th</sup> January, 2019.

[2] At the hearing of the application, the parties proceeded by way of written submissions and affidavit evidence. In that regard, the applicant's submissions dated 18<sup>th</sup> February 2019, were duly filed on his behalf by **M/S VERONICA MIGAI & CO. ADVOCATES** while those of the petitioner were filed on his behalf by **P.R. OJALA & COMPANY ADVOCATES**.

From the submissions and the grounds in support of the application, it was apparent that the basic issue for determination was whether the impugned grant was obtained fraudulently without the consent of the applicant/objector and by concealment of material facts.

[3] **Section 76** of the **Law of Succession Act** is the applicable provisions of the law and it basically provides for revocation or annulment of grant where the proceedings to obtain the grant were defective in substance or that the grant was obtained fraudulently by the making of a false statement or by concealment from the court of something material to the case “**inter alia**”.

The applicant alleges that the deceased who was the father of the petitioner was one of the sons of one **OKECH OGWEYO** and a brother of the objector’s father, one **OGOYE OKECH**.

Therefore, both the petitioner and the objector are grandsons of the late **OKECH OGWEYO**, whose property consisting of several parcels of land was distributed by him to his three sons including the father of the objector and that of the petitioner. Later during the process of land registration, the property was sub-divided with each piece getting a distinct registration number to wit, **Nos. Kanyada/Kotieno-Katuma ‘A’/1188, 1234, 1249, 1297, 1304, 1306 and 1307**.

[4] It was the objector’s contention that the sub-division and registration of the said parcels of land was undertaken by the deceased but in his own name and that of his sons thereby denying the objector and the other beneficiaries of the estate of the late **Okech Ogweyo** their respective share of the entire estate.

The objector further contended and implied that the deceased held the estate of the late **Okech Ogweyo** in trust for his own benefit and that of all the other beneficiaries and being one of the beneficiaries his consent was not sought by the petitioner before applying for letters of administration respecting the estate of his father i.e. the deceased, who was a younger brother of his (objector’s) father.

It was for the foregoing reasons that the objector attributed the taking of the grant by the petitioner to fraud and concealment of material facts.

[5] On his part, the petitioner contended that their late grandfather **Okech Ogweyo**, had three sons each of whom had their own parcels of land and therefore the objector cannot claim any right over his (petitioner’s) father estate on account of the estate of their late grandfather.

The petitioner further contended his late father (the deceased herein) was survived by one widow and seven sons and left behind three parcels of land registered in his name i.e. parcels **No.Kanyada/**

**Kotieno/Katuma/1516, 1234 and 1249** and parcel **No.1297** jointly registered in his name and that of the objector’s father. The petitioner indicated that if anything, the objector would be a beneficiary with respect to parcel No.1297 and nothing more. He (Petitioner) contended that the deceased never held any of the parcels of land in trust for the benefit of the larger family of the late **Okech Ogweyo**, his and the objector’s grandfather. He also contended that the objector’s consent was unnecessary as he was not a member of the deceased’s family and that he did not obtain the impugned grant by fraud or by concealment of material facts.

[6] The obligation to establish fraud and concealment of material facts on the part of the petitioner/respondent in obtaining the impugned grant lay squarely with the objector. However, the totality of the evidence availed herein strongly suggest that the obligation was never discharged even on a balance of probabilities. To the contrary, it was established that the objector is not a member of the deceased’s family from whom the consent to petition for the grant ought to have been sought. His allegations of fraud and concealment of material facts against the petition was clearly based on the element of consent, i.e lack of it. However, that element having been disproved, the allegations of fraud and concealment of material facts cannot possibly stand for purposes of prevailing upon this court to grant the orders sought herein by the objector.

[7] Most importantly, there was, not even a scintilla of evidence from the objector to establish the relationships if any of the property of the deceased with that of the deceased’s father i.e. the objector’s grandfather. The existence of the alleged trust was not established by oral/or documentary evidence. All the search documents exhibited herein by the objector do not show the existence of the alleged trust.

Apparently, the objector's dispute with the petitioner is centred more on ownership of land rather than on inheritance of the deceased's net estate. This objection was most unsuitable for a succession cause. It is accordingly dismissed with costs to the petitioner who may now activate the process of having the impugned grant confirmed if that has not already been done.

Ordered accordingly.

**J.R. KARANJAH**

**JUDGE**

**02.04.2019**

[Read and signed this 2<sup>nd</sup> day of **April, 2019**]