



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT HOMA BAY**

**SUCCESSION CAUSE NO.53 OF 2013**

**IN THE MATTER OF THE ESTATE OF: AGAN ONDIEK ../DECEASED**

**AND**

**IN THE MATTER OF REVOCATION OF GRANT OF LETTERS OF ADMINISTRATION**

**BETWEEN**

**MONICA ATIENO KICHE.....PETITIONER/RESPONDENT**

**AND**

**ABEL OYOO ONDIEK.....OBJECTOR/APPLICANT**

**RULING**

1. The Notice of Motion dated 21<sup>st</sup> August 2018, is brought under **Section 45 and 47** of the **Law of Succession Act** seeking the basic order that pending the hearing and final determination of this petition, a permanent injunction be issued to restrain the respondent/objector, **ABEL OYOO ONDIEK**, either on his own or through his agents/servants, and/or employees from alienating, transferring, sub-dividing, disposing off or in any other way interfering with the status and registration of the suit land parcel **NO. CENTRAL KASIPUL/KAMUMA/493**, and that any subdivisions and transfers already done from the name of the deceased **AGAN ONDIEK** to the respondent or such other person be revoked and that the title revert to the name of the deceased.

2. The application is based on the grounds indicated in the notice of motion and supported by the averments contained in an affidavit dated 21<sup>st</sup> August 2018, deponed by the petitioner/applicant's advocate, **MAURICE OUMA**.

All these are opposed by the respondent on the basis of the averments contained in his replying affidavit dated 12<sup>th</sup> September 2018.

Both parties argued the application by way of written submissions. From the rival submissions and the grounds in support of the application, it is evident that the estate property land parcel **Central Kasipul/Kamuma/493** is at the centre of this application and indeed the entire petition which was effectively presented and filed in this court on **23<sup>rd</sup> July 2013**, by the petitioner, **MONICA ATIENO KICHE**, in her capacity as the sister-in-law of the deceased being the wife of a brother to the deceased who was a step brother to the respondent.

3. The petition, being the foundation of the present application and indeed any other application in this matter including the summons for revocation of grant dated 16<sup>th</sup> August 2015 and presented herein by the objector/respondent, would be the focal point in the determination of the application and in the making of orders which would be just and fair to all the parties.

In that regard, it is noted that the petition upon its presentation to the court by the applicant was accepted by the court and the necessary grant of letters of administration intestate was issued on **7<sup>th</sup> May 2015**. The grant is yet to be confirmed. However, on the 25<sup>th</sup> August 2015, the respondent filed his application dated 16<sup>th</sup> August 2015 for revocation of the grant. This was certified as urgent by the court on the same 25<sup>th</sup> August 2015. At the same time, temporary orders were made against the applicant/petitioner restraining her from transferring, subdividing, selling, charging or otherwise dealing with the estate property No. Central Kasipul/Kamuma/493.

4. The hearing of the summons for revocation of grant was ultimately slated for 5<sup>th</sup> November 2015, on which date the court was informed that the petitioner was deceased and needed to be substituted. The matter was therefore stood over generally but the temporary injunctive orders were to remain in force until further orders and/or directions from the court. This matter remained dormant for a period of three (3) years until the 28<sup>th</sup> August 2018 when the present application dated 21<sup>st</sup> August 2018, was filed by counsel for the departed petitioner, **MR. MAURICE OUMA**, in which he seeks restraining orders against the objector in the summons for revocation of grant respecting the

forementioned estate property and orders to revoke any title that may have been obtained by the objector and restore the original title in the name of the deceased.

5. The application comes before any orders and/or directions respecting the position of the petition in view of the demise of the petitioner and the pending application by the objector for revocation of the grant issued to the petitioner.

The objector intimated to the court on the 5<sup>th</sup> November 2015, that he intended to substitute the deceased petitioner and sought time to do so. However, he became indolent and took no further action while enjoying the temporary orders granted in his favour against the petitioner. Indeed, none of the parties took any action for a period of about three years such that the court had to issue a notice under **Section 73** of the **Law of Succession Act**. It was then that the departed petitioner's advocate filed the present application on the 28<sup>th</sup> August 2018, under the name of the petitioner. This means that it is the advocate rather than the petitioner or her substitute who is seeking orders against the respondent/objector on the basis that the respondent is intermeddling with the estate property.

6. It is highly doubtful whether the advocate had the necessary capacity or standing to make this application on behalf of the departed petitioner. Was he instructed by the petitioner and if so, did the petitioner rise from the dead and instruct him prior to reverting to her final resting place??? Clearly, the advocate abused the court process by purporting to bring this application on instructions from a dead client. In the process, he personalized a matter which did not belong to him as he was merely acting as an agent of the petitioner pending the final conclusion of the petition by a confirmation of the grant.

As it were, the petition and all that appertained to it including the objector's summons for revocation of grant abated with the death of the petitioner and in the absence of her substitute.

7. Any orders made by the court arising from the summons for revocation of grant were made in vain as the petitioner was no more.

The estate property remained intact in the name of the deceased. Any purported transfer or transmission of the property to any of the specified beneficiaries was thus unlawful, null and void **ab initio**.

Both the late petitioner and the respondent/objector were listed in the petition as some of the beneficiaries, but while this matter was pending before this court for confirmation of the grant and/or the determination of the objector's summons for revocation, the objector irregularly and unlawfully moved the magistrate's court at Oyugis for grant of letters of administration intestate respecting the estate of the deceased to himself as the sole survivor of the deceased and beneficiary of the deceased's estate.

8. Indeed, acting on the false information given by the objector, the magistrate's court issued a grant on the 17<sup>th</sup> July 2017, in his favour. All that happened at a time when the initial grant to the petitioner dated the 7<sup>th</sup> May 2015, had not been revoked by the court as wished by the objector vide his application for revocation of the grant dated 16<sup>th</sup> August 2015.

All the foregoing points to an ordinary and lawful process commenced by the petitioner prior to her death falling into the hands of unscrupulous and greedy beneficiaries after her death and being grossly messed up by themselves and their legal representatives.

This state of affairs must now be contained by the following orders made by this court pursuant to **Rule 73** of the **Probate and Administration Rules** to the effect that the grant issued to the late petitioner dated 7<sup>th</sup> May 2015, be and is hereby revoked on account of abatement of the petition due to her demise and that the grant issued to the respondent/objector by the magistrate's court at Oyugis dated 17<sup>th</sup> July 2017 together with its certificate of confirmation of grant dated 30<sup>th</sup> June 2018 be and are hereby revoked and any action undertaken on the strength of the certificate of confirmation be and is hereby declared null and void ab-initio. The parties shall bear their own costs of the applications.

Ordered accordingly.

**J.R. KARANJAH**

**JUDGE**

**09.05.2019**

[Read and signed this 9<sup>th</sup> day of **May, 2019**]