



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT HOMA BAY**

**SUCCESSION CAUSE NO.633 OF 2014**

**FORMERLY OYUGIS PM'S COURT SUCC. CAUSE NO.126 OF 2011**

**IN THE MATTER OF THE ESTATE OF:**

**ISMAEL NYANGWESO NDALO.....DECEASED**

**AND**

**SAMSON ELISHA OGAL ..... APPLICANT**

**VERSUS**

**JULIAS BALA OPAP .....RESPONDENT**

**RULING**

1. The grant of letters of administration intestate respecting the estate of the late **Ismael Nyangweso Ndalo** (deceased) was issued to Julias Bala Opapa (Petitioner) on 23<sup>rd</sup> February 2012 by the magistrate's court at Oyugis in Succession Cause No.126 of 2011. He was listed as the only surviving heir of the deceased and authorized to administer the only asset belonging to the deceased, being land parcel No. central Kasipul/Nyalenda/393 which was eventually transmitted to him vide the certificate of confirmation of grant dated 22<sup>nd</sup> December 2015 and issued by this High Court at Homa bay.

However, more than four years since confirmation of the grant, summons for revocation of the grant were taken out by Samson Elisha Ogal (applicant/objector) on account of misrepresentation on the part of the petitioner at the time of obtaining the grant.

2. The grounds on which the application is based are set out in the summons and supported by the applicant's averments and annexures contained in his supporting affidavit dated 29<sup>th</sup> March 2019 and a further affidavit dated 20<sup>th</sup> May 2019. He therefore prays for an order of revocation of the grant and for a fresh grant to be issued.

The petitioner/respondent opposed the application on the basis of the grounds contained in his replying affidavit dated 26<sup>th</sup> April 2019.

3. As directed by the court, the application was argued by way of written submissions and whereas the applicant filed his submissions dated 20<sup>th</sup> June 2019 through **H.O. Mimba & Co. Advocates**, the respondent did not and chose to place full reliance on the contents of his affidavit in reply to the application.

4. This court, having given due consideration to the application on the basis of its supporting grounds and those in opposition thereto as well as the submissions filed herein, would state that the main complaint against the petitioner was that he obtained the impugned grant and certificate of confirmation of grant by means of making false statements and concealment of material facts or short of this, by acts of fraud.

Indeed, under **Section 76** of the **Law of Succession Act (Cap.160 Laws of Kenya)**, a grant may be revoked at any time if it is found to have been obtained fraudulently by the making of a false statement or by concealment of material facts.

The burden to establish fraud and misrepresentation or concealment of material facts, against the respondent lay with the applicant on a preponderance of probability.

5. In his supporting affidavit the applicant indicates that the deceased was his brother and that he is the only surviving member of the

deceased's family entitled to administer and eventually inherit the deceased's estate especially land parcel No. Central Kasipul/Nyalenda/

393 which was given to him by the deceased prior to his death and has lived in it since 1995.

The applicant also indicated that the petitioner is a stranger to the estate of the deceased as he was not his relative nor his dependant in any manner and that he misrepresented himself as the sole survivor of the deceased and sole beneficiary of his estate on account of a non-existent sale agreement allegedly between the deceased and the petitioner's father.

6. All these allegations made against the petitioner are serious and criminally actionable. They show that indeed the petitioner approached the court for grant of letters of administration respecting the estate of the deceased and falsely represented himself as the only survivor and heir of the deceased knowing too well that he was not related to the deceased and had no evidence to show that the estate property was purchased by his father from the deceased thereby conferring to him a beneficial interest in the land. He was simply an intruder in the estate of the deceased who embarked on a gross abuse of the court process to fraudulently obtain the impugned grant and the certificate of confirmation of grant.

His objection to the application cannot be sustained under any circumstances and is in fact, a confirmation of the allegations made against himself by the applicant who is the true and actual beneficiary of the estate of the deceased.

7. Even if there was a formal or informal arrangement between the deceased and the father of the petitioner over the occupation and ownership of the estate property, the petitioner was not privy to that arrangement and cannot now purport to attest to the authenticity or otherwise of that arrangement.

The fact remained that as the time of the death of the deceased the estate property was lawfully his property which was available for distribution to his heirs.

Being the only surviving member of the deceased's family, the applicant was the sole beneficiary of the estate of the deceased and not the petitioner as indicated in his petition for the grant.

In sum, this application is allowed to the extent that the grant of letters of administration issued to the petitioner on the 23<sup>rd</sup> February 2012 and the certificate of confirmation of grant dated 22<sup>nd</sup> December 2015 are hereby revoked with orders that a fresh grant be issued forthwith to the applicant/objector, **Samson Elisha Ogal**, and be confirmed on expiry of the prescribed six months period or a lesser period of three months if deemed necessary.

The respondent shall bear the costs of the application.

Ordered accordingly.

**J.R. KARANJAH**

**JUDGE**

**17.10.2019**

[Dated and delivered this 17<sup>th</sup> day of **October, 2019**]