



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT HOMA BAY

SUCCESSION CAUSE NO.19 OF 2018

FROM ORIGINAL HOMA BAY

CM'S SUCC. CAUSE NO.153 OF 2016

IN THE MATTER OF THE ESTATE OF: BENEDICTO

OCHOLA NYARASI alias OCHOLA NYARASI.....DECEASED

VERSUS

JACKTON ONYANGO SEGEAPPLICANT

VERSUS

JOHN OGWENO OCHOLA.....RESPONDENT/PETITIONER

RULING

[1] The summons for revocation of grant dated 4th October 2018, was taken out by **Jackton Onyango Sege** (Objector) against **John Ogweno Ochola** (Petitioner/Respondent) who is the duly appointed administrator of the estate of the late **Benedicto Ochola Nyarasi** also known as **Ochola Nyarasi**, who passed away on 28th February 1994.

The material grant of letters of administration was issued to the respondent on **20th June 2017** by the magistrates' court in Homa Bay and was confirmed on 15th March 2018, by the same court.

[2] The respondent was identified as a beneficiary of the estate together with his brother Joseph Ngoche Ochola and the two grandsons of the deceased i.e. Idi Ochieng Odhiambo and Bernard Ochola Odhiambo.

The objector was never listed as a beneficiary of the estate. The certificate of confirmation of grant indicated that the estate comprising of **L.R. No. Gem/Kotieno/610** was to be shared between the respondent and his aforementioned brother.

Thus, the respondent was to have 6.0 hectares of the land and his brother was to have 5.2 hectares.

Seemingly aggrieved by this distribution of the estate, the objector now seeks an order for the revocation of the grant and the certificate of confirmation of grant.

[3] The grounds for the application are on the body of the appropriate summons for revocation. These are fortified by the averments of the objector in his supporting affidavit dated 4th October 2018.

In essence, the objector alleges that the respondent obtained the grant by making false representations and concealing material facts within the intention of excluding other beneficiaries who are bona fide purchasers and live on the estate property.

In his further supporting affidavit dated 25th April 2019, the objector indicated that his claim to part of the estate is by virtue of a purchase agreement entered between him and the respondent seven or 20 years ago.

[4] The respondent opposed the application on the basis of the grounds and averments contained in his replying affidavit dated 22nd October 2018, in which he contends that the objector is not a beneficiary of the estate of the deceased and that he only purchased part of the estate from himself (respondent).

[5] From the averments and facts contained in both the objector's supporting affidavits and the respondent's replying affidavit, it is clear that the objector's interest in the material estate is based on a sale of part of the estate to him by the respondent some years ago after the death of the deceased in 1994. It would therefore follow that as at the time the deceased died, the objector had no legal or beneficial interest in the estate. He was not a beneficiary of the estate at the time and as such, there was no obligation on the part of the respondent to seek his consent or include him as a beneficiary. The sale/purchase agreement was between him and the respondent and not the deceased. If he suffered any loss or damage on account of that agreement, his remedy lies personally with the respondent and not the estate of the deceased.

In any event, the agreement was null and void "**ab-in-tio**" in so far as the respondent purported to sell part of the estate of the deceased without having first obtained a grant of letters of administration of the estate and having it confirmed.

What the respondent did was unlawful and improper as the estate had not yet been lawfully transmitted to him and other beneficiaries. However, these events occurred long before the formal application for grant of letters of administration was made by the respondent in 2017.

[6] For all the foregoing reasons, it cannot be stated as alleged by the objector that the impugned grant and certificate of confirmation of grant were obtained by the respondent by false representations and concealment of material facts.

In essence, the objector has failed to establish and prove any of the factors set out in **Section 76** of the **Law of Succession Act** for revocation and/or annulment of grants.

Consequently, the present application is lacking in merit and is hereby dismissed with costs to the respondent.

J.R. KARANJAH

JUDGE

03.10.2019

[Dated and delivered this 3rd day of **October, 2019**]

[In the presence of M/s Songwa for M/s Mimba for applicant and Mr. R. Ochieng for Respondent]