



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT HOMA BAY

SUCCESSION CAUSE NO.1 OF 2017

FORMERLY HOMA BAY SRM'S SUCC. CAUSE NO. 83 OF 2007

IN THE MATTER OF THE ESTATE OF:

TERESIA AKONGO WUOCHE & HAGNES OWITI WUOCHE (DECEASED)

AND

GETRUDA ANYANGO OGAGA.....1ST OBJECTOR/APPLICANT

MARGARET OBALA OSODO.....2ND OBJECTOR/APPLICANT

VERSUS

GEORGE OCHIENG ANGENG.....1ST PETITIONER/RESPONDENT

JENIPHER AKOTH AOLO.....2ND PETITIONER/RESPONDENT

RULING

[1] Grant of Letters of Administration Intestate respecting the estates of **Teresia Akongo Wuoche** and **Hagnes Owiti Wuoche**, who died on 2nd October 1989 and 10th June 1990, respectively, was issued on the **12th June 2015**, to George Ochieng Angeng and Jenipher Akoth Aolo (petitioners) and was confirmed on the same day as shown in the relevant certificate of confirmation of grant which indicates that the estate property **Land Parcel No. Kanyamwa/K/K/Kadwet/437**, was to be shared wholly between the petitioners and be held in trust for George Ochieng Angeng (first petitioner) and William Okuthe Aolo, in equal shares.

[2] Both the grant and the certificate of confirmation of grant were issued in **Succession Cause No.282 of 2015** at the High Court Homa Bay. It was indicated therein that the file was formerly Homa Bay Chief Magistrate's Court **Succession Cause No.83 of 2007**, in which the applicant for the letters of administration was **Peter Aolo Magolo**, in his capacity as a step son of the deceased persons. His sureties for that purpose were the first petitioner herein and William Okuthe Aolo, both of whom are listed as beneficiaries in the certificate of confirmation of grant. Neither Peter Aolo Magolo nor Jenipher Akoth Aolo, were listed as beneficiaries in the certificate.

[3] More than one year after the issuance of the grant and the certificate of confirmation of grant in 2015, the present application for revocation of the grant and the certificate dated 4th September 2017 was filed on 5th September 2017 by Getruda Anyango Ogaga and Margaret Obala Osodo (applicants/objectors) on grounds that the grant was obtained fraudulently by making false statements or allegations of fact and by concealment of material facts.

Both applicants deponed an affidavit dated 25th August 2017, in support of the application.

The respondents/petitioners oppose the application on the basis of the grounds contained in their replying affidavit dated 1st December 2017, deponed by the first respondent/petitioner, George Ochieng Angeng.

[4] The original summons for revocation of grant dated 4th September 2017, was substituted for an amended summons for revocation of grant dated 17th October 2018, and filed in court on 19th October 2018. It contains additional prayers and fresh amended grounds in support thereof and a fresh supporting affidavit dated 17th October 2018, deponed by the applicants/objectors.

The respondents/petitioners did not file any fresh affidavit in reply.

The application proceeded to hearing by way of “**viva-voce**” evidence.

In that regard, the applicants testified as **PW1** and **PW2** and called no other witness.

The respondents testified as **DW1** and **DW2** and called two witnesses i.e. Philister Olala Angeng (**DW3**) and William Okuthe Aolo (**DW4**).

After the trial, the applicants filed their written submissions dated 23rd June 2019, through **M/s Robert Ochieng Advocates**, while the petitioners/respondents likewise filed their submissions dated 23rd July 2019.

[5] From the grounds in support of the application and the rival submissions, it was apparent that the basic issue for determination was whether the impugned grant and certificate of confirmation of grant both dated the 12th June 2015, were obtained fraudulently by the making of false statements and/or concealment of material facts on the part of the respondents.

Section 76 (b) of the **Law of Succession Act** provides for the revocation and/or annulment of a grant obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case.

[6] In their evidence, the applicants revealed that they are sisters and while the deceased Teresia Akongo Wuoche, was their biological mother, the deceased Hagnes Owiti Wuoche was their step mother. They said that the first respondent is the son of the second respondent and that the two are not related to the deceased. They however, said that the first respondent was a grandson of one Magolo who inherited the last wife of their father **Wuoche** but that the father of the first respondent never inherited any woman.

In essence, the applicants implied and contended that the respondents had no capacity to inherit the estate of the deceased persons, and that the information they gave to the court while applying for the grant comprised of false statements thereby failing to reveal the actual facts pertaining to the deceaseds’ actual heirs and beneficiaries of their estate.

[7] The respondents admitted the fact that they are son and mother respectively and stated that the applicants are the first respondent’s aunties, while the deceased persons were his paternal grandmothers. They also stated that while the second applicant Margaret is a daughter of the deceased Teresia, the deceased Hagnes was not survived by any child but, the two deceased were also referred as grandmothers of the second respondent.

The respondents indicated that after the death of the deceased Teresia, they obtained the impugned grant in a succession cause which was instituted by the first respondent’s late father who died before the grant was issued. He (first respondent) then took over the succession cause and eventually obtained the impugned grant together with his mother (the second respondent).

The respondents, further indicated that one **Magolo**, was the grandfather of the second respondent, whose husband was the late **Peter Aolo Magolo**.

The witnesses, William (**DW4**) and Philister (**DW3**) gave evidence which was supportive of the respondents’ case and in the process implied that the present application is laden with falsehood and made in bad faith.

[8] Basically, a consideration of the evidence in its totality draws a picture of the two deceaseds having been daughters of the late **Jacob Wuoche**, who was a polygamist having married two or more wives during his lifetime. The first deceased **Teresia**, was the biological mother of both applicants/objectors and the second deceased, **Hagnes**, was their step mother. All these are facts which were not disputed or substantially disputed by the respondents/petitioners. They significantly confirm that indeed the applicants are related to the deceased as daughters and step daughters and were thus entitled to and beneficiaries to the estate of both deceased.

[9] The respondents alleged that they were all related to the deceased in that the first respondent referred to the deceased as his paternal grandmothers and to the two applicants as his aunties. They said that after the death of their husband, **Wuoche**, both deceased were “**inherited**” by different people in accordance with Luo Customs and in that regard, the second deceased was inherited by one Aolo Magolo who was the grandfather of the first respondent and therefore a father-in-law of the second respondent as her husband Peter Aolo Magolo was the son of the said Aolo Magolo. These facts were however, denied by the applicants who maintained and contended that the respondents were not related to the deceased and had no capacity to obtain the impugned grant.

[10] Indeed, there was no sufficient evidence from the respondents to prove their alleged relationship with the deceased persons and in particular, the second deceased, Hagnes, though the person known as Aolo Magolo, said to have been the father of Peter Aolo Magolo, the late husband of the second respondent and father to the first respondent. It would therefore follow that indeed they (respondents) had no capacity to obtain the grant respecting the estate of the two deceased. They were not the true and actual beneficiaries of the estate as opposed to the two applicants. Neither, was the late Peter Aolo Magolo, who was the actual person who petitioned for the grant but passed away before it was issued and the respondents purported to take over the material succession cause and in the process obtained the impugned grant and certificate of confirmation of grant.

[11] The action of the respondents, to take over the succession cause instituted by the late Peter Aolo, was irregular, improper and unlawful as the information which was given to the court by him was false and misleading as he was not the true and actual beneficiary of the estate of the two deceased.

In any event, the purported takeover of the succession cause by the respondents was illegal as the record does not show that it was sanctioned by the court by way of a substitution order and/or an “**ad litem**” grant of letters of administration for purposes of the suit.

It is instructive to note that the sureties in the application by grant filed by the late Peter Aolo Magolo, as a stepson of the deceased and sole

survivor and beneficiary of their estate were the respondent's second witness, William Okuthe Aolo (**Dw4**) and the first respondent, George Ochieng Angeng (**DW1**).

It would appear that after the demise of Peter Aolo Magolo, the first respondent assisted by the second respondent and the surety (DW4) "**hijacked**" the succession cause and proceeded to fraudulently and unlawfully obtain the impugned grant and certificate of confirmation of grant.

[12] It may therefore be safely stated that the applicants' claim against the respondents was sufficiently and satisfactorily established and proved by the evidence led herein by themselves (applicant) which effectively discredited and disproved the respondents' evidence.

In the result, this court finds and holds that the impugned grant and certificate of confirmation of grant were indeed obtained by the respondents by fraud and/or concealment of material facts and must accordingly be and are hereby revoked forthwith with an order that a fresh grant do issue to the two applicants/objectors together with the requisite certificate of confirmation of grant which shall have the effect of extinguishing any proprietary interest the respondents may have acquired in the estate property, **Kanyamwa/K/K/Kadwet/437** on account of the revoked grant and certificate of confirmation of grant.

Ordered accordingly.

J.R. KARANJAH

JUDGE

23.10.2019

[Dated and delivered this **23rd** day of **October, 2019**].