



IN THE HIGH COURT OF KENYA

AT BUSIA

PROBATE & ADMINISTRATION NO. 40 OF 2013

IN THE ESTATE OF: JOHN JOSEPH MUTANDA ODEBERO.....DECEASED

BETWEEN

LUCY ANYANGO BUDHOS.....APPLICANT/OBJECTOR

AND

STEPHEN EUGENE MALOBA

VINCENT MUTANDA.....RESPONDENTS

RULING

1. **Lucy Anyango Budhos**, the applicant/ objector herein filed an application dated 15th March 2017 for revocation and annulment of the grant issued herein under section 76 of the Law of Succession Act and Rule 44(1) of the Probate and Administration Rules. It is premised on the following grounds:

- a) That the grant was obtained fraudulently by making a false statement or by concealment of material facts.
- b) That the grant was obtained by means of untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation made in ignorance or inadvertently.

2. The respondents did not file a response.

3. I have perused the affidavit of the applicant. The following facts have emerged:

- a) That the respondents herein are the grandchildren of **John Joseph Mutanda Odebero**, the deceased herein.
- b) That the deceased herein was survived by his children.
- c) That the petitioners/respondents had omitted some beneficiaries from the list they filed in court.

4. Section 76 of the Law of succession provides inter alia as follows:

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

(a) that the proceedings to obtain the grant were defective in substance;

(b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;

(c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;

5. Rule 44 (1) of Probate and Administration Rules provides for the form of the application.

6. I therefore find that the respondents concealed some material facts from the court and did not rank high in priority to file the succession cause in respect of the estate of **John Joseph Mutanda Odebero**, the deceased herein. The application is merited. The grant to the respondents is annulled and the objector is hereby issued with a grant. She should move the court to consolidate this matter with Busia High Court Succession Cause No. 127 of 1995.

7. The costs of this application to the applicant.

DELIVERED and SIGNED at BUSIA this 20th day of November, 2019.

KIARIE WAWERU KIARIE

JUDGE