



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

(CORAM: CHERERE-J)

SUCCESSION CAUSE NO. 1004 OF 2014

**IN THE MATTER OF THE ESTATE DAUDI OKUOGA ATIENO alias DAVID OKUOGA alias
DAVID OKUOGA ATIENO (DECEASED)**

BETWEEN

ELYNE ACHIENG OKUOGA.....OBJECTOR/APPLICANT

AND

WASHINGTON GOGO OKUOGA.....PETITIONER/RESPONDENT

JUDGMENT

Introduction

1. **DAUDI OKUOGA ATIENO alias DAVID OKUOGA alias DAVID OKUOGA ATIENO (*deceased*)** died sometimes on 17th July, 1990. According to the Petitioner, the deceased's estate comprised of the following;

i. Land Parcel No. KISUMU/BAR/2136

ii. Land Parcel No. KISUMU/BAR/2175

iii. Land Parcel No. KISUMU/BAR/3844

2. Letters of administration were issued on 26th January, 2015 to **WASHINGTON GOGO OKUOGA (*Petitioner*)** who described herself as son to the deceased.

3. The grant was subsequently confirmed in favour of the Petitioner and a Certificate of Confirmation of Grant was issued on 16th September, 2015.

Application

4. By summons dated 13th May, 2019 and filed on 14th May, 2019, **ELYNE ACHIENG OKUOGA (*Objector*)** seeks the following orders:

1) Revocation of the Letters of Administration issued to the Petitioner on 26th January, 2015 and confirmed in his favour 16th September, 2015

2) An order directing the Petitioner to surrender the original title deeds for Land Parcel No. KISUMU/BAR/2136, Land Parcel No. KISUMU/BAR/2175, Land Parcel No. KISUMU/BAR/3844 and Land Parcel No. KISUMU/BAR/4915

3) An order that the Applicant and other beneficiaries be made administrators of the deceased's estate

4) That ownership of Land Parcel No. KISUMU/BAR/2136, Land Parcel No. KISUMU/BAR/2175, Land Parcel No. KISUMU/BAR/3844 and Land Parcel No. KISUMU/BAR/4915 be reverted to the name of the deceased

Objector's' Case

5. The Application is supported by an affidavit sworn by the Objector on 13th May, 2019 in her capacity of wife to deceased's son Christopher Onunga who is also deceased. She avers that the deceased had 3 wives who and 19 children, 12 of whom are deceased. She further avers that the Petitioner having obtained the grant by concealment of material particulars has disinherited the deceased's other beneficiaries and is threatening to evict them from the deceased's parcels of land. Annexed to the affidavit are green cards for Land Parcel No. KISUMU/BAR/2136, Land Parcel No. KISUMU/BAR/2175 and Land Parcel No. KISUMU/BAR/3844 all having been transmitted to the Respondent after the grant in this cause was issued.

6. When the matter came up for directions on 23rd September, 2019, the Petitioner confirmed that he had been served with the notice of motion. This court granted him 30 days to file his response and fixed the application for hearing on 04th November, 2019.

7. On 04th November, 2019 when the matter came up for hearing, the Petitioner was absent and had not filed any response to the application.

Analysis and Determination

8. I have considered the application in the light of the supporting affidavit and the annexures thereto.

9. In the absence of a response by the Petitioner, the court makes a finding that the averments in the supporting affidavit that the deceased had other children other than the Petitioner is conceded.

10. Section 76 of *the Act* provides 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;

(d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either-

(i) to apply for confirmation of the grant within one year from the date thereof, or such

longer period as the court has ordered or allowed; or

(ii) to proceed diligently with the administration of the estate; or

(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or

(e) that the grant has become useless and inoperative through subsequent circumstances.”

11. In Musa Nyaribari Gekone & 2 Others v Peter Miyianda & another [2015] eKLR, the court of Appeal held that:

“The expression “any interested party” as used in the foregoing provision, in its plain and ordinary meaning, is in my view wide enough to accommodate any person with a right or expectancy in the estate.”

12. The expression “*any interested party*” as used in the foregoing provision, in its plain and ordinary meaning, is in my view wide enough to accommodate any person with a right or expectancy in the estate such as the Applicant herein. The Applicant who is a wife to deceased’s son is beneficially entitled to the estate of deceased and on that basis, she has *locus standi* to present the application for revocation of the grant.

Disposition

13. Consequently, I am satisfied that the Objector has made out a case for revocation of Letters of administration and the grant issued to the Petitioner. As a result, it is hereby ordered **THAT**:

a) **The objection has merit and it is allowed**

b) **Letters of administration issued on 26th January, 2015 in favour of WASHINGTON GOGO OKUOGA (*Petitioner*) is hereby revoked.**

c) **The subsequent Certificate of Confirmation of Grant issued to the Petitioner on 16th September, 2015 are is correspondingly revoked.**

c) **The Petitioner is hereby directed to within 14 days from today’s date surrender the original title deeds for Land Parcel No. KISUMU/BAR/2136, Land Parcel No. KISUMU/BAR/2175 and Land Parcel No. KISUMU/BAR/3844 to the Land Registrar, Kisumu County**

d) **The Land Registrar, Kisumu County is directed to cancel title deed in respect of Land Parcel No. KISUMU/BAR/2136, Land Parcel No. KISUMU/BAR/2175 and Land Parcel No. KISUMU/BAR/3844 issued to WASHINGTON GOGO OKUOGA (*Petitioner*) and revert their ownership to DAUDI OKUOGA ATIENO alias DAVID OKUOGA alias DAVID OKUOGA ATIENO, notwithstanding that the original title deeds may not have been surrendered by the Petitioner.**

e) **The Petitioner and the Objector are directed to hold a joint family meeting within 30 days from the date hereof to agree on at least three administrators each represented each of the houses of the deceased.**

f) **The Objector shall bear the costs of these objection proceedings**

DELIVERED AND SIGNED AT KISUMU THIS 07th DAY OF *November* 2019

T. W. CHERERE

JUDGE

READ IN OPEN COURT IN THE PRESENCE OF-

Court Assistant - Okodoi

For Petitioner/Respondent - Present in person

For Objector/Applicant - Present in person