



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT BUSIA**

**PROBATE & ADMINISTRATION NO.122 OF 2011**

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

**CLEOPHAS MARK ONDEWE MUGWANG'A.....DECEASED**

**BETWEEN**

**CAROLINE ATIENO ONDEWE.....PETITIONER/ RESPONDENT**

**AND**

- 1. WILFRED ODWORI KEFA**
- 2. ANTONY PILLY MULIRO**
- 3. CHRISTOPHER NDUNGU**
- 4. DESTERIO NGAYI ODUORI .....INTERESTED PARTIES/APPLICANTS**

**RULING**

1. The applicants herein moved the court by way of chamber summons dated 5<sup>th</sup> July 2018 under sections 76 & 85 of the Law of Succession Act and Rule 73 Probate and Succession Rules. They are seeking the following orders:

- a) That this honourable court revoke and or annul the certificate of confirmation of grant issued on 11<sup>th</sup> December 2014.
- b) That this court issue an order to cancel any new numbers that arose from parcel number SAMIA/BUTABONA/111
- c) That this court reissue an amended certificate of confirmation of grant to accommodate their claims.

2. The application is premised on the following grounds:

- a) That the applicants had purchased land from the estate of the deceased herein.
- b) That the administrator had included them in form P. & A. 5 in the liabilities section but omitted them during confirmation.
- c) That the administrator has commenced proceedings to evict them.

3. On the 23<sup>rd</sup> September 2019, the parties sought to have the application disposed of by way of written submissions. Later the respondent's counsel indicated that they did not wish to file any submissions and opted to rely on the replying affidavit.

4. Upon my perusal of the submissions, and the replying affidavit as well as the record, the following facts emerge:

- a) That in the P. & A. 5 form, the petitioner/administrator had included the applicants in the liability section.

This was therefore an acknowledgement that they were recognized as purchasers. The contention that they purchased the land after the demise of the deceased is tantamount to amending what had already been acknowledged earlier without any justification.

b) That in the application for confirmation the applicants were left out.

There being no explanation why they were left out, one is tempted to agree with the applicants that the confirmation was made without their knowledge with an aim of defeating their claim.

c) There is evidence that the petitioner respondent has initiated a civil suit number 128 of 2018 in the Busia Chief Magistrate's Court to evict Wilfred Odwori Kefa, one of the applicants herein.

This further demonstrates that the petitioner's intention when she omitted the applicants from the distribution of the estate was to deny them what she had already acknowledged at the commencement of this succession cause.

5. The application is therefore allowed in the following terms:

a) That the grant that was confirmed herein is revoked.

b) That the resultant subdivision of land parcel number SAMIA/BUTABONA/111 is hereby revoked and the parcel restored to its original owner.

c) That the petitioner/respondent herein is directed to file in court a fresh application for confirmation to cater for all beneficiaries who must include the applicants herein within 30 days. Failure to do so, the applicants be at liberty to move the court.

d) Costs of this application to the applicants.

**DELIVERED and SIGNED at BUSIA this 10<sup>th</sup> day of December, 2019**

**KIARIE WAWERU KIARIE**

**JUDGE**