



IN THE HIGH COURT OF KENYA AT BUSIA

PROBATE & ADMINISTRATION NO. 21 OF 2008

IN THE ESTATE OF:

OLUOCH SIRINDI SIRINDI.....DECEASED

BETWEEN

JONATHAN BWIRE OJIAMBO.....PETITIONER

AND

JOHN ALUOCH ALOO.....1ST OBJECTOR

ROSEMARY AJIAMBO ALOO.....2ND OBJECTOR

JANEPHESA AUMA BWIBO.....3RD OBJECTOR

RULING

1. There are two applications herein. In the first application, **JOHN ALUOCH ALOO** and **ROSEMARY AJIAMBO ALOO** in an application dated 8th February 2016 are seeking for revocation and annulment of the grant issued herein under section 76 of the Law of Succession Act, Cap. 160 as read with Article 159 of the Constitution of Kenya. It is premised on the following grounds:

- a) That the petitioner falsely claimed to be a grandson of **OLUOCH SIRINDI SIRINDI**.
- b) That the petitioner is not a relative of **OLUOCH SIRINDI SIRINDI**, the deceased.
- c) That the petitioner unlawfully obtained the grant herein with a view to disinherit the rightful heirs.

2. The third objector filed a similar application dated 23rd May 2016 based on the same legal provisions and it is based on similar grounds.

3. The applications were opposed by the petitioner/respondent on grounds that:

- a) That the 1st and the 2nd objectors are not related to **OLUOCH SIRINDI SIRINDI**, the deceased herein.
- b) That the objectors/applicants lack the capacity for a grant of the orders they are seeking.

3. I have perused the affidavits of both parties. The following facts have emerged:

- a) That the petitioner/respondent herein in the affidavit in support of confirmation of the grant herein dated 18th November 2009 described himself as a child of **OLUOCH SIRINDI SIRINDI**, the deceased herein. However, in paragraph 4 of his evidence affidavit dated 18th April 2017, he stated that the deceased **OLUOCH SIRINDI SIRINDI** was his grandfather's brother.
- b) That the objectors are the grandchildren of **OLUOCH SIRINDI SIRINDI**, the deceased herein. This fact was not disclosed by the petitioner/respondent before he obtained the contested grant.

4. From the evidence on record, I make a finding that the objectors are the heirs of the deceased **OLUOCH SIRINDI SIRINDI**. The respondent would only have featured if the deceased herein was not survived by any grandchildren.

5. 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;

6. The grant herein was obtained by concealment of material facts by the petitioner/respondent, as well as making a false statement on his relationship with the deceased. The grant cannot therefore stand. I accordingly revoke the same and order the objectors herein to apply for letters of administration within 3 months.

7. The costs of the application to the objectors.

DELIVERED and SIGNED at BUSIA this 17th day of July, 2018

KIARIE WAWERU KIARIE

JUDGE