

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

PROBATE AND ADMINISTRATION NO. 339 OF 2013

IN THE MATTER OF THE ESTATE OF PAULO EZODI AME.....DECEASED

NAWIRE REGINA OMULAAPPLICANT/OBJECTOR

VERSUS

FEDERIKO PAULO OUNOI.....RESPONDENT/PETITIONER

RULING

(Summons for revocation or annulment of grant dated 2nd August, 2016)

1. Nawire Regina Omula, the Applicant/Objector through the summons for revocation of a grant dated 2nd August, 2016 seeks an annulment of the grant issued and confirmed to the Respondent/Petitioner Federiko Paul Ounoi in respect of the estate of the deceased Paul Ezodi Ame (hereinafter simply referred to as the deceased).

2. The application is supported by an affidavit sworn by the Applicant on 2nd August, 2016 in which she avers that she is a daughter of the deceased but her name was not included in the list of the beneficiaries. Her case is that the grant and the confirmation thereof were obtained upon non-disclosure of material information.

3. The Respondent though served with a hearing notice did not attend the hearing of the application. However, in a replying affidavit sworn on 21st September, 2016, he averred that in accordance with the Teso customary laws he excluded the Applicant as a daughter of the deceased as she is already married elsewhere.

4. The certificate of death filed by the Respondent herein shows that the deceased passed away on 2nd December, 2012. In accordance with Section 2 of the Law of Succession Act, Chapter 160 the estate of the deceased who died intestate is governed by the said Act.

5. Section 29 of the Law of Succession Act, Chapter 160 defines a dependant to include a child of a deceased person. The definition does not discriminate between a son and a daughter. Even without reference to the 2010 Constitution, it goes without saying that the custom which the Respondent relied on in excluding the Applicant from the list of the dependants is repugnant to justice and morality. He was misadvised and ended up failing to disclose all the dependants of the deceased.

6. His actions amount to concealment of something material to the case which is a ground for the revocation of a grant as per Section 76(b) of the Law of Succession Act, Chapter 160.

7. In essence, the application has merit. The same succeeds and the grant made to the Respondent/Petitioner and confirmed on 2nd February, 2015 is annulled. The Objector and the Petitioner shall be appointed joint administrators of the estate of the deceased.

8. In light of the fact that this is a family affair, I direct each party to meet own costs of the application.

Dated, signed and delivered at Busia this 16th day of March, 2017.

W. KORIR,

JUDGE OF THE HIGH COURT