



REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
SUCCESSION CAUSE NO. 27 OF 2016
IN THE MATTER OF THE ESTATE OF
DAVID LEVI OSOME MAGOLO (DECEASED)
AND IN THE MATTER OF APPLICATION

BETWEEN

JENNIFER OWINO MAGOLO APPLICANT/OBJECTOR

AND

GRACE ANYANGO OSOME1ST RESPONDENT

DAMARIS AKINYI OSOME 2ND RESPONDENT

RULING

1. The matter before me today concerns the estate of **DAVID LEVI OSOME MAGOLO** (“David”) who died on 18th April 2014. According to the affidavit in support of the petition for letters of administration (Form P & 5), he was survived by his widow, Grace Anyango Osome (“Grace”) and eight children. He left behind his death gratuity from the Ministry of Transport and three properties; **KISUMU NYALUNYA/927, KISUMU/NYALUNYA/940, KISUMU/NYALUNYA/803.**

2. The grant of letters of administration intestate was issued on 8th July 2016 to Grace and Damaris Akinyi Osome. On 6th August 2016, David’s mother, **JENNIFER OWINO MAGOLO** (“Jennifer”), filed a summons seeking to stay the issue of the grant of letters of administration to Grace on the ground that she was disposing of property originally belonging to her deceased husband, **WILLIAM MAGOLO ONDIEK** (“William”). She also claimed that Grace was depriving her and her children of their inheritance.

3. Although the application was defective as the grant had already been issued, I decided to treat it as an application for revocation in order to deal with the issues raised substantively without undue regard to technicalities. I heard the testimony of both Jennifer and Grace and considered their depositions.

4. During the proceedings, it emerged that the subject properties had been transmitted to the David as the son and beneficiary of William by virtue of ***Kisumu Succession Cause Number 396 of 2011***. In those proceedings, David applied for the grant of letters of administration for the estate of his father, William, who died on 11th October 2011. In form P & A 5, he named himself and Jennifer as the only survivors. The Chief’s letter accompanying the petition also stated David and Jennifer were the only survivors. In

due course a grant was issued to David on 19th April 2013. It was confirmed by the court on 21st February 2014 with both David and Jennifer in attendance at the hearing. As a result, David was the beneficiary of all the properties.

5. It is not disputed that Grace is the surviving wife of David. Jennifer summarized her claim when she stated that, *“I have come to court because Grace Osome has come to court to take my properties and I have children to feed. I want to be the administrator of the estate of my husband. I want to assist my grandchildren. I want to administer all the properties.”*

6. Grace explained that she resides on the same property with Jennifer and that she has no intention of evicting her. She further told the court that Jennifer collects rents from a rental property which she uses for her upkeep.

7. The power to revoke a grant is provided for in **section 76** of the ***Law of Succession Act (Chapter 160 of the Laws of Kenya)***. It is exercised if the applicant shows that the petitioner failed to disclose or concealed material facts, or the grant was obtained by fraud and that the procedure used was defective. None of the facts disclosed fall within these provisions.

8. On the other hand, the appointment of an administrator is governed by **section 66** of the ***Law of Succession Act***. It provides that while the court has overall discretion in appointing an administrator, it is guided by the list of priority. The surviving spouse is normally given priority absent any exceptional circumstances.

9. The truth of this matter is that Jennifer participated fully in the administration of William’s estate which resulted in the properties going to the David whom she accepted as the only other beneficiary. She cannot complain about the administration of the David’s estate particularly when Grace has stated that she will not be evicted from her home and when she continues to receive rent from some of the houses David left.

10. It is my hope that the family will see it fit to live together in harmony and avoid further litigation. The application filed on 9th August 2016 is dismissed with no order as to costs.

DATED and DELIVERED at KISUMU this 9th day of March 2017.

D. S. MAJANJA

JUDGE

The applicant/objector in person.

Mr Nyanga instructed by Nyanga and Company Advocates for the respondents/petitioners.