



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
MISC. APPLICATION NO. 187 OF 2012

IRENE MWANGO ANASI

JANE EVALINE OPANDE APPLICANTS

EUCABETH BOSIBORI MAJIWA

VERSUS

JARED TOM NG'ITI OPANDE..... RESPONDENT

AND

GEORGE MORARA OPANDE INTERESTED PARTY

RULING

1. On the 28th February 2012, a petition for letters of Administration Intestate respecting the estate of the late **Abigael Kemunto Opande**, was presented at the SRM Court Keroka by **Jared Tom Ng'iti Opande**, who is the respondent in the present application.

The affidavit in support of the petition dated 10th January 2012, showed that the deceased was survived by two sons i.e. the respondent and **George Morara Opande**, who is the interested party herein.

2. The only asset listed was the portion of land known as **Nyaribari Chache/Keumbu/3017**, said to be valued at Ksh. 100,000/=.

After the usual pre-requisites, the petition was allowed and on 3rd April 2012, the Grant of letters of Administration Intestate was issued to the respondent and confirmed on the 4th May 2012, by the Senior Resident Magistrate at Keroka with the result that the estate property was transmitted absolutely and solely to the respondent.

3. As at that time, the jurisdiction of a magistrate to deal with a succession matter was donated by S.48(1) of the Law of Succession Act, (Cap 160 LOK) to wit:-

“Notwithstanding any other Law which limits jurisdiction, but subject to the provisions of section 49, a resident magistrate shall have jurisdiction to entertain any application other than an application under section 76 and to determine any dispute under this Act and pronounce such decrees and make such orders therein as may be expedient in respect of any estate the gross value of which does not exceed one hundred thousand shillings;...”

4. A few days after the confirmation of the grant, the present application for revocation of the grant dated 22nd May 2012 was made by **Irine Mwango Anasi**, **Jane Evaline Opande** and **Eucabeth Bosibori Majiwa**, as the surviving daughters of the deceased.

The application is based on the grounds contained in the body of the appropriate summons for revocation of grant as fortified by the averments contained in a supporting affidavit dated 22nd May 2012, deponed by the first applicant on her own behalf and that of the other applicants.

5. The respondent and the interested party did not file any response to the application neither did they appear for the hearing of the application by way of “viva-voce” evidence as directed by the court on the 15th April 2013.

The first applicant testified at the hearing on the 30th March 2016, to the effect that the deceased was blessed with eight (8) children including the three applicants as well as the respondent and the interested party. The five of them were the only surviving children as at the time of the death of their deceased mother. Their father passed away in 1995.

6. It was further the testimony of the first applicant that the deceased also left behind four grandchildren but none of them was listed as a beneficiary of the estate when the respondent applied for and obtained the disputed grant of letters of administration. The applicants themselves were also not listed as beneficiaries of the estate which was valued at Ksh. 100,000/= yet the property measured about three and half acres and was situated along the Kisii-Keroka road and part thereof measuring about two (2) acres was sold by the interested party for the sum of Ksh. Six (6) million.

7. The applicants contended that the estate was not only undervalued but was also given solely to the respondent in exclusion of all the other beneficiaries who were also entitled to a share thereof.

The applicants further contended that the application for the grant and the confirmation thereof were made by the respondent without their knowledge and consent and that in so doing, the respondent acted fraudulently and concealed material facts with the help of a chief who wrote a letter dated 29th February 2012, in which they (applicants) were omitted as beneficiaries.

8. All the foregoing evidence remained uncontroverted. It cogently and credibly establishes in terms of S.76 of the Law of Succession Act that the proceedings to obtain the material grant were defective in substance as the Magistrate’s Court at Keroka had no jurisdiction to issue a grant respecting an estate clearly valued at more than Ksh. 100,000/=. Further, the grant was obtained fraudulently by the making of a false statement or by the concealment of material facts or information e.g that the deceased was not only survived by sons but also daughters. The omission of the daughters was fraudulent and a blatant violation of S.38 of the Law of Succession Act not to mention Article 27 of the Constitution which provides for equality and freedom from discrimination.

9. It is instructive to note that the grant was issued on 3rd April 2012 and confirmed on 4th May 2012, prior to the expiry of Six (6) months contemplated under S.71 of the Law of Succession Act.

In sum, this application was made to succeed. It is therefore allowed to the extent that the grant of letters of Administration Intestate dated 3rd April 2012 and issued to the respondent be and is hereby revoked together with the certificate of confirmation of grant dated 4th May 2012.

A fresh grant do issue formally in the joint names of the applicant **Irine Mwango Anasi** and the interested party **George Morara Opande** and be brought up for confirmation within a period of four (4) months from this date hereof.

10. The Deputy Registrar to re-call the revoked grant and certificate of confirmation for necessary cancellation and/or destruction.

J.R. KARANJAH

JUDGE

[Read and signed this 7th day of April 2016]