



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT HOMA BAY
SUCCESSION CAUSE NO 120 OF 2015

IN THE MATTER OF THE ESTATE OF MALAKI OGAWANG AGALO (THE DECEASED)

**IN THE MATTER OF THE REVOCATION/ANNULMENT OF GRANT OF LETTERS OF
ADMINISTRATION TO RICHARD OTIENO OGWANG**

JOSEPH OTIENO ODONDO.....OBJECTOR/APPLICANT

RICHARD OTIENO OGWANG.....PETITIONER/RESPONDENT

RULING

1. By an application dated 12th July 2016 supported by the affidavit sworn by **JOSEPH DENNIS ODONDO**, the applicant prays that the letters of administration issued to **RICHARD OTIENO OGWANG** be revoked and/or annulled and the objector be allowed to take out a separate cause or be made an administrator in the estate of **MALAKI OGWANG AGALO**.
2. The applicant also prays that an order of specific performance do issue to compel the respondent to execute transfer documents of a portion of land parcel **NO CENTRAL KARACHUONYO/KOGWENO ORIANG/997** measuring 45x33 metres in favour of the applicant, and in the alternative the court executive officer be authorized to execute such transfer.
3. The basis for this application is that the grant herein was obtained fraudulently as the respondent failed to disclose to the court the full material particulars that in 1991 the deceased had sold the entire parcel aforementioned to the applicant.
4. The respondent now intends to sell the same parcel to a Third party without considering that the applicant has used that parcel since 1991.
5. The applicant explains that the deceased had not transferred the portion he had sold to him vide the sale agreement annexed as Exhibit 2 at a consideration of Ksh 7000/-. He therefore considers himself one of the deceased's immediate beneficiaries and the said portion of land should devolve to him.
6. He laments that the respondent did not seek his consent before applying for letters of administration nor was he included in the category of liabilities.
7. In opposing the application the respondent deposes in his replying affidavit that in applying for grant of letters of administration intestate he followed the legal procedure and awaited the prescribed period before seeking confirmation wherein no objection was raised or filed. He describes the alleged sale agreement as strange to him and that the objection has been overtaken by events. He insists that the only remedy available to the applicant is a refund of the consideration.

8. At the hearing, Miss Migai who appeared for the applicant reiterated the position stated in the supporting affidavit. The respondent explained that he had been in prison in the year 2007 and upon release he realized that the applicant had fenced a portion of his father's land. He inquired from the village elder what was going on but the applicant failed to show up. When the respondent reported the matter to the area chief, the applicant turned up with an agreement which was neither signed nor stamped. The applicant then requested that the matter be referred to the clan but he failed to turn up and instead lodged a caution upon learning that the respondent had filed a succession cause.

9. The Land Registrar then wrote to the applicant but that did not elicit any response.

10. Is the applicant a beneficiary for purposes of the Law of Succession? **Section 66** sets out the order of priority regarding who should be given grant of letters. He does not fit within the meaning of a dependant under **Section 29**. What is clear is that the applicant is neither a dependant nor a relative of the deceased but a purchaser. Would he then qualify to administer the deceased's estate on account of one piece of property which he purportedly purchased? Would he even know how the estate should be distributed or who the other heirs are? I have no hesitation in finding that the answers to all these questions are in the negative

11. It is not disputed that the Respondent is a son of the deceased and that he has a right to apply for grant to administer his late father's estate of the letters. Why would he need to seek the applicant's consent?

12. The scenario would have been different if the deceased's family had refused to take up letters of administration and perhaps had even been cited. That is not the case here and it is not disputed that the respondent is the son of MALAKI OGWANG AGALO and therefore has a right to apply for letter to administer the estate

13. The property had not even been transferred to the applicant and the veracity of the sale agreement is contested. The applicant has not even established that the respondent was aware of the alleged transaction between him and the deceased. I hold that the applicant has no locus to be a co-administrator of the estate of MALAKI OGWANG AGALO.

14. What should happen is that the applicant should now file suit against the respondent as the administrator of the deceased's estate claiming ownership of the disputed portion and seeking specific performance. There is no reason whatsoever o warrant revoking or annulling the grant earlier issued to the respondent, and the application is dismissed with costs to the respondent.

Delivered and dated this 13th day of **September 2016** at Homa Bay

H.A. OMONDI

JUDGE