



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT KAKAMEGA.

MISC. APPLICATION CASE NO. 43 OF 2013.

BEGINA MUHONJA ONGADI ::::::::::::::::::::::::::::::::::: PETITIONER.

VERSUS

ISAACK OMIDO NGUSALE ::::::::::::::::::::::::::::::::::: APPLICANT.

RULING

INTRODUCTION.

1. The deceased herein WILLIAM NDOLI died on the 24th June, 1971. Letters of Administration Interstate were issued to BEGINA MUHONJA ONGADI on the 15th February, 2011 and confirmed on the 22nd day of November, 2011 by the Senior Resident Magistrate's Court at Vihiga.

The application.

2. On the 10th day of May, 2013 the applicant herein ISAACK OMIDO NGUSALE filed summons for revocation or annulment of Grant wherein he sought for orders:-

(1) Spent;

(2) That pending interparties hearing of this application the Administrator either by himself or through his servant and/or agents be restrained by way of a temporary injunction from interfering with demarcating, surveying, disposing, transferring, seeing, fencing or in any other manner dealing with suit premises known as KAKAMEGA/BUGONDA/479, KAKAMEGA/BUGONDA/482 and KAKAMEGA/BUGONDA/486.

(3) That the grant of letters of administration made to BEGINA MUHONJA ONGANDI made on the 18th day of October, 2010 be **REVOKED** and/or **ANNULLED**.

3. The application is premised on the grounds that the proceedings to obtain the grant was defective in substance, and the said grant was obtained fraudulently by the making of a false statement or by concealment from the court of something material to the case. It is further supported by the affidavit of the applicant wherein he depones that form P & A 5 did not disclose the true information regarding the survivors of the deceased and that the entire estate was devalued. He claims that he was not served with the said application nor did he give consent to the filing of the same. He wants the said grant to be revoked.

4. The application is opposed by the Administrator BEGINA MUHONJA ONGADI who has filed a response dated 15 th day of July, 2013. She depones that she filed the petition for grant of letters of administration of the deceased because the applicant and his brother one Henry Mukiza Ndoli (deceased)

were unable to do so since they had financial constraints. She was later to be compensated by the two.

5. She confirms that the estate of the deceased was comprised of three parcels of land and that the land parcel No. Kakamega/Bugonda/486 was shared equally. She denies the allegations of eviction as made by the applicant herein. She wants the application to be dismissed.

6. The application was canvassed orally. In his evidence ISAACK OMIDO GUSALE PW1 testified that the deceased herein died leaving behind five (5) sons namely:-

(1) Stephen Mungabi.

(2) Shem Khamach.

(3) Henry Omido.

(4) Isaac Omudo.

(5) Samson Omido.

7. He further testified that the deceased's estate comprised of:-

(i) KAK/BUDONGO/95.

(ii) KAK/BUDONGO/1492.

(iii) KAK/BUDONGO/479.

(iv) One land is 482/486.

8. He claimed that the administrator herein Begina used fraudulent means and took a portion of his land and has processed title deeds for plot Nos. 482/486. He also claims that the administrator did not involve him in the filing of the grant.

9. PW2 ROSA OMEGA in her testimony told the court that Begina had taken land from Isaac even after the same had been distributed by the deceased.

10. Sofia Afandi, PW3 told the trial court that the deceased gave Begina's husband his land and that PW1 was also given his portion.

11. DW1 BEGINA MUHONJA ONGANDI told the trial court that the deceased herein was his father in law. She confirmed that he had five (5) sons and that he (deceased) gave her husband a portion of his estate. She explained why she filed, the succession cause herein. She claims to have informed the applicant herein.

12. DW2, FATUMA HENRY MUKISA claims that the applicant is cultivating in her own portion and has asked her to sell the land and go back to her original home.

Determination.

13. The issue herein for determination is whether or not to revoke the grant herein issued to BEGINA MUHONJA ONGADI. Although the applicant did not cite section 76 of the Law of Succession Act in his summons, it is trite law that summons for revocation of grant are provided for under the said section. It is incumbent upon any party making an application for revocation or annulment of grant to demonstrate the existence of any, some or all of the grounds whatever the case may be.

14. The applicant has specified that the proceedings to obtain the grant were defective in substance and

that there was fraud by making of a false statement and the concealment from the court of something material to the case.

15. I find that in petitioning the court, the petitioner failed to include all the beneficiaries of the deceased estate. They did not sign the consent as required by law rendering the process defective. Further the value of the said estate of the deceased is questionable. The deceased's estate comprises of four parcels of land which cannot amount to Ksh. 100,000/=. The applicant has also claimed that his signature was forged. All these allegations by the applicant were not challenged by the petitioner herein. She only claimed that she informed the applicant that she was filing the petition but she did not specify whether the applicant agreed to her filing the petition.

16. I therefore agree that the applicant has demonstrated to this court that the process to obtain the grant was defective and that the same was obtained fraudulently by the making of a false statement and/or by concealment from the court of something material to the case.

The application is therefore allowed.

SIGNED, DATED and DELIVERED at KAKAMEGA this 10TH day of NOVEMBER, 2016.

C. KARIUKI

JUDGE.

In the presence of:-

.....**Present**.....**for the Petitioner.**

.....**Present****for the Applicant.**

.....**Anunda** **Court Assistant.**