



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
SUCCESSION CAUSE NO.397 OF 2013

IN THE MATTER OF THE ESTATE OF OLOKO MUNIKA(DECEASED)

AND

IN THE MATTER OF AN APPLICATION FOR REVOCATION OF GRANT AND FOR CROSS APPLICATION FOR GRANT

GEORGE ODUORI OLOKOAPPLICANT

VERSUS

1. **GABRIEL SIMALI WESONGA**
2. **THOMAS ODUODI SIMAMALI**
3. **MATHEW ODUORI SIMALI**
4. **MICHAEL SIMALI**
5. **MARGARET AWINO OSINGO**
6. **ROSE MAENDE SIMALI**
7. **MARY SIMALI**
8. **BONVENTURE CHESARESPONDENTS**

R U L I N G

1. This Court is asked to determine the Summons for Revocation or Annulment of Grant dated 14th August 2014 in which the Applicant seeks the following orders:-
 - a. **That the grant of letters of administration in respect of the estate of OLOKO MUNIKA issued to HELENA OTSIENO SIMARI vide Busia SPM succession cause No.81 of 1987 be revoked and annulled.**
 - b. **That the grant of letters of administration in respect of the estate of OLOKO MUNIKA be issued to the objector/applicant.**
 - c. **That pursuant to payer (a) above the register of land parcel number MARACHI/KINGANDOLE/1275 be rectified by striking off the name of HELENA OTSIENO SIMALI at entries Nos.2,3 & 4 dated 24/5/1989 and the distribution of parcel NO.MARCHI/KINGANDOLE/1275 aforementioned amongst all persons beneficially entitled thereto be determined through the cause herein being succession cause No.81 of 1987 currently registered as P & A No.398 of 2013.**
 - d. **That costs of the proceedings be provided for.**
2. That Application which is unopposed, is supported by the affidavit of George Oduori Oloko. In paragraph 8 of that Affidavit the Applicant avers as follows:

“THAT I sought legal advice and filed a claim in Butula land Dispute Tribunal, which tribunal awarded me the whole land and the awarded was adopted vide Busia SRM Land Case No.33 of 1999 but was overturned through Judicial Review proceedings. Annexed and marked GOO-4, 5 & 6 are copies of the proceedings, order of court and the chief’s letter.”

3. I have had opportunity of reading the proceedings before the Tribunal and something struck me. In his testimony before the Tribunal, the Applicant states that Oloko Munika (**the Deceased**) herein died on 12th December 1980 and then proceeds to say as follows:-

“I have also to state that the defendant Bonventure Simali Odwodi managed to forge death certificate stating that my late father Oloko Munika died 29th July 1985 while my father died on 12th December 1980.

In this respect there are two death certificates issued in respect of my late father Oloko Munika. These are as follows.

1. The actual death certificate is No 93067 of 20th August 1981.

2. Death certificate No.152175 of 27th October 1986 died on 29th July 1985 is not true but is just forgery made by my brother in law Bonventure Simali to enable him transfer my land to his name without my authority. I hereby produce the two death certificates to this panel for perusal and information and guidance please.”

4. I think that there is need to settle the Date of Death of the Deceased as this may have a bearing on the matter before Court. The commencement date of The Law of Succession Act is 1st July 1981. If the Deceased died on 29th July 1985 then the Law applicable in respect to Succession of The Deceased is the Act. If however, as claimed by the Applicant, that the Deceased died on 12th December 1980 then regard must be given to the provisions of Section 2(2) of The Law of Succession Act which reads:

“The estates of persons dying before the commencement of this Act are subject to the written laws and customs applying at the date of death, but nevertheless the administration of their estates shall commence or proceed so far as possible in accordance with this Act.”

5. For this reason I now invite parties to address me on this issue i.e. the Date of Death of the Deceased.

F. TUIYOTT

J U D G E

DATED, DELIVERED AND SIGNED AT BUSIA THIS 10TH DAY OF MARCH 2015.

IN THE PRESENCE OF:

KADENYICOURT ASSISTANT

N/A.....FOR APPLICANT

IPAPU.....FOR RESPONDENTS