



**IN THE HIGH COURT AT HOMA BAY**

**SUCCESSION CAUSE NO. 19 OF 2014**

**IN THE MATTER OF THE ESTATE OF  
ACHUODHO OMUNE (DECEASED)**

**BETWEEN**

**KENNEDY OPICHE OLELA *legal representative***

***of the estate of JACOB OLELA OUMA (Deceased)..... APPLICANT***

**AND**

**WILLIAM OGIDA OCHUODHO ..... PETITIONER**

**AND**

**ELLY OMONDI OMOLLO ..... INTERESTED PARTY**

**RULING**

1. The application for consideration is a summons to revocation of grant dated 2<sup>nd</sup> April 2014 made under **section 76** of the **Law of Succession Act (Chapter 160 of the Laws of Kenya)**. It seeks the following orders:

*[1] Interim orders of injunction restraining the interested party from evicting, dispossessing and/or interfering with the applicants use of land parcel number KANYADA/KOTIENO KATUMA”A”/27.*

*[2] That the grant of representation issued to the respondent vide RONGO PM’S Court Succession Number 11 of 2013 be annulled/revoked and such grant of representation be issued to the applicant alongside the petitioner.*

*[3] That the court makes a finding that the transfer of the whole parcel number KANYADA/KOTIENO KATUMA”A” /27 to the interested party without making provision for the applicant is unlawful in terms of the provisions of the law of succession act.*

*[4] Costs of the application.*

2. The applicant, Kennedy Opiche Olela, is the son of the late Jacob Olela Ouma. He was granted a limited grant of letters of administration ad litem on behalf of his father’s estate to file this

application. He claims that the late Jacob Olela Juma purchased *KANYADA/KOTIENO KATUMA "A" /27* ("the property") from the deceased. He avers that the petitioner did not disclose the fact that the estate of Jacob Olela Juma was a beneficiary of the estate of the deceased as a purchaser of the said property.

3. According to the applicant's deposition sworn on 2<sup>nd</sup> April 2014, Jacob Ouma Olela purchased the property from the deceased in 1993. He avers that all the formalities regarding the purchase of the land including executing the transfer and obtaining Land Control Board consent were done but the land could not be transferred as the purchaser fell ill and died in 2001.
4. In response to the application, the interested party, Elly Omondi Omollo deponed in the replying affidavit sworn on 8<sup>th</sup> April 2014 that he had purchased the property from the petitioner having satisfied himself that the petitioner was in possession of a confirmed grant dated 20<sup>th</sup> August 2013. Thereafter he entered into a sale agreement with the petitioner, executed a transfer and obtained Land Control Board consent and is now the registered proprietor of the property.
5. The parties agreed that the application would be canvassed by way of affidavits, written and oral submissions.
6. Mr Nyauke, counsel for the applicant, submitted that the applicant was a beneficiary to the estate of the deceased as his father was the purchaser of the deceased's property. He stated that although the transfer had not been registered, the consent from the Land Control Board had been sought and approved and that therefore the land was not available for distribution as part of the deceased's estate. Counsel further argued that the petitioner concealed material facts when applying for the grant in failing to disclose that the objectors were beneficiaries to the estate of the deceased and thus the said letters of administration of estate were fraudulently obtain and should be revoked.
7. Mr Oguttu-Mboya, for the petitioner and interested party submitted that as a purchaser, the applicant was neither a dependant nor a beneficiary to the estate of the deceased and as such he had no *locus standi* to mount the summons as he could not have been a party to the probate proceedings in the subordinate court. Mr Mboya further submitted that the suit property remained in the name of the deceased and thus was part of the deceased's free estate which was available for distribution. He stated that the suit property had been sold and transferred to the interested party and the court could therefore not set aside an absolute infeasible title under **section 93** of the **Law of Succession Act**.
8. **Section 76** of the **Law of Succession Act (Chapter 160 of the Laws of Kenya)** relied upon by the applicant provides as follows:

*A grant of representation whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by interested party or its own motion:-*

- a. *That the proceedings to obtain the grant were defective in substance;*
- b. *That the grant was obtained by the making of a false statement or by concealment of from the court of something material to the case.*
- c. *That the grant was made by an untrue allegation of fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently.*
- d. *The person to whom the grant was made has failed, after due notice and without reasonable cause either:-*
  - i. *To apply for confirmation of the grant within a year from the date thereof or such longer period as the court has ordered or allowed; or*
  - ii. *To proceed diligently with the administration of the estate; or*
  - iii. *To produce to the court, within the time prescribed any such inventory or account of administration as is required by the provisions of paragraph (e) and (g) of section 83 or has produced such investigation or account which is false in any material particular; or*

- e. *That the grant has become useless and inoperative through subsequent circumstances.*
9. The applicant has a duty to prove that any grounds set out in **section 76 of the Law of Succession Act** before the grant issued is revoked. *The gravamen of the applicant's case is that the grant was fraudulently obtained to the detriment of the family of the late Jacob Ouma Olela who bought land from the deceased. He contends that petitioner obtained the grant of letters of administration by failing to disclose the purchaser's interest.*
10. I have perused the original file in **Rongo Succession Cause No. 11 of 2013** and I have not detected any defect in the form and procedure used. All the beneficiaries were disclosed in the letter dated 10<sup>th</sup> September 2012 written by the Chief, West Kanyada Location and in the petition (Form P & A 80) and the affidavit in support (Form P & A 5). The applicant, as a purchaser, is not a person entitled to a grant of letters of administration under **section 66 of the Law of Succession Act**. I would further add that the applicant was neither a dependant nor beneficiary of the deceased and he cannot therefore apply for revocation of a validly issued grant. In **Ileri Nyaga v Karani Ngari & Another Embu HC Succ. No. 68 of 2007 [2010] eKLR** it was held that “... a buyer or purchaser cannot cause an otherwise valid grant to be revoked for the only reason that he was not recognized in the proceedings. As stated earlier in my ruling, his recourse lies in suing whoever sold the property to him and if such person be dead, then he can only sue the administrator of the deceased's estate.”
11. It is not disputed that the property in issue was solely registered in the name of the deceased at the time of his death and it was therefore part of the free property of the deceased available for distribution in accordance with intestate succession rules. There was no encumbrance or entry in the register to show that any other party had an interest. As a result of the succession cause, the petitioner became the absolute owner and sold it to the interested party. **Section 93 of the Law of Succession Act** protects the interested party's title to land and the transfer to him cannot be revoked in these circumstances through revocation of the title.
12. Before I conclude, let me mention that the applicant also relied on the affidavit of Omondi Kenneth Achieng' sworn on 8<sup>th</sup> April 2014. He is the Chief who issued the initial letter filed in the subordinate court. The tenor of the deposition is that the family of the deceased and that of Jacob Olela Ouma sat down and resolved that the deceased's family should refund the interested party the amount paid for the lease, that the two families would see if the petitioner would be added an additional sum and that the petitioner would thereafter apply for the grant of letters of administration and transfer the property to the applicant's family. It is apparent that the discussions and the resolutions reached by the families of the deceased and Jacob Olela Ouma did not involve the interested party and he cannot be bound by them.
13. The upshot of it all is that the summons for revocation grant is hereby dismissed with no order as to costs.

**DATED and DELIVERED at HOMA BAY** this 9<sup>th</sup> day of October 2014.

**D. S. MAJANJA**

**JUDGE**

Mr Nyauke instructed by Nyauke and Company Advocates for the applicant.

Mr Oguttu instructed by Oguttu Mboya and Company Advocates for the petitioner and interested party.