



IN THE HIGH COURT AT HOMA BAY

SUCCESSION CAUSE NO. 66 OF 2014

IN THE MATTER OF THE ESTATE OF

PIUS OKELLO SETO (DECEASED)

BETWEEN

MICHAEL OKELLO OKELLO.....APPLICANT

AND

DANIEL OJJO OKELLO.....1ST RESPONDENT

EMMANUEL ODHIAMBO MBOYA.....2ND RESPONDENT

JAMES OUKO OPIYO.....3RD RESPONDENT

RULING

1. Before the court is a summons for revocation and annulment of the grant of letters of administration seeking the following orders;
 - a. The Honourable Court is pleased to order grant of letters of administration issued to him on 2nd December 2001 and confirmed on the 20th November 2004 in ***Succession Cause No. 17 of 2001 by the Senior Resident Magistrates Court at Oyugis.***
 - b. Alternatively, the honourable court be pleased to order a petition to be filed afresh and evidence be adduced by all interested parties to aid the court in determine the competent legal administrator of the estate of PIUS OKELLO SETO.
2. The grounds set out in the summons dated 3rd July 2014 and in the applicants deposition of the same date is that there are two certificates of confirmation of grant issued in ***Oyugis Succession Case No. 17 of 2001*** thereby making the distribution of the estate of the deceased difficult. He also states that there are allegations of fraud in respect of the certificates of confirmation and the matter is pending investigation as to which is the valid or genuine certificate.
3. The application is opposed on the basis of the replying affidavit of James Ouko Opiyo sworn on 11th July 2014. He avers that there is no reason to annul or revoke the grant of letters of administration. He asserts that the petition in ***Oyugis Succession Case No. 17 of 2001*** and confirmation of the grant issued on 1st December 2003 were based on the consent of the family members. He avers that family members approved the appointment of the applicant as

administrator to follow up the process of administering the estate of the deceased. The respondents maintain that as a result of the confirmation of the grant issues, the estate of the deceased has been administered hence the court should not revoke the grant.

4. The applicant's case is that there are two certificates of confirmation in respect of the deceased's estate and in order to resolve the issue, I called for and examined the original file for **Oyugis Succession Case No. 17 of 2001**. The proceedings were commenced by a petition (From P & A 80) filed by the applicant and was accompanied, *inter alia*, by a letter from the Chief of Kowidi Location dated 6th March 2001 which showed that the deceased had the following beneficiaries; Michael Okello Okello, Daniel Ojijo Okello, James Ouko Opiyo and Emmanuel Odhiambo Mbuya. After the petition was filed, it was gazetted on 7th September 2001 vide **Gazette Notice No. 6148**. Thereafter, the applicant applied for confirmation of the grant issued on 2nd September 2003. Upon the applicant's application, the grant was confirmed and the certificate of confirmation issued on 1st December 2003.
5. According to the certificate of confirmation issued on 1st December 2003 the beneficiaries of the deceased's estate obtained equal shares of the deceased properties namely; WEST KASIPUL/ KONYANGO KOLAL/563, 373 and 1064.
6. Contrary to the applicant's assertion, no further or other certificates of confirmation of grant have been issued by the court capable of being revoked.
7. I have looked at the purported grant issued in **Oyugis Succession Case No. 17 of 2004** allegedly issued in the matter of the Estate of Pius Okello Seto and the same is not supported by the relevant petition and advertisement in the Kenya Gazette. I also called for the original file and I found the same to be an application for grant *ad colligenda bona* for the estate of Benta Atieno Okoth. No grant of letters of administration was issued as alleged or at all.
8. The application has been brought under **section 76** of the **Law of Succession Act** which 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. Interestingly, the application has been brought by the petitioner himself rather than "an interested party" as contemplated by **section 76** of the **Act**. Anyway, the court can only revoke a grant upon proof by the applicant of the specific circumstances enumerated under **section 76** of the **Act**. Upon perusal of the original file, I am satisfied that the grant issued in **Oyugis Succession Case No. 17 of 2001** is valid, was issued in a regular manner and no ground has been proved to entitle the court

to revoke the same.

10. Obviously, if there is a forged grant in existence elsewhere, the law must take its course but as I have stated there is no reason to revoke the grant issued in ***Oyugis Succession Case No. 17 of 2001***. As the grant has already been confirmed, the estate has now been administered and nothing else remains to be done.

11. Consequently, the Summons dated 3rd July 2014 is dismissed. As this is a family matter there shall be no order as to costs.

DATED and DELIVERED at HOMA BAY this 9th day of October 2014.

D.S. MAJANJA

JUDGE

Ms Mimba instructed by H. O. Mimba and Company Advocates for the applicant.

Mr Oguttu-Mboya instructed by Oguttu-Mboya and Company Advocates for the respondents.