



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of Estate of Meshack Ochieng Onyachi (Deceased) (Succession Cause 739 of 2009) [2024] KEHC 6547 (KLR) (31 May 2024) (Ruling)

Neutral citation: [2024] KEHC 6547 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
SUCCESSION CAUSE 739 OF 2009
MS SHARIFF, J
MAY 31, 2024**

BETWEEN

SILVESTER OCHIENG 1ST PETITIONER

PHENWIX ODHIAMBO OCHIENG 2ND PETITIONER

AND

DORINE ACHIENG OCHIENG OBJECTOR

RULING

1. The Objector moves to court against the petitioners for revocation of grant dated 19th January 2022 seeking orders for the revocation of the grant that was issued on 27th January 2012 to the petitioners herein.
2. The motion is premised on the following grounds:
 - i. The petitioners while petitioning for the grant of letters of administration, deliberately concealed from the Court the fact that the land parcel number Kisumu/Manyata A/198 which was distributed as part of this estate did not belong to the deceased.
 - ii. That the Petitioners herein were not the biological children of the deceased neither did they stay with the deceased during his lifetime and the only resurfaced after his death from their home in Awasi.
 - iii. The petitioners also applied for the letters of administration herein without the knowledge and or consent of the objector.
3. The Petitioners denied the allegations in their response vide a replying affidavit sworn by the 1st Petitioner on 24th March 2022 in which they aver that the Deceased herein had two wives Celesa Omondi and Zena Ramadhan who are all deceased and they aver that they are all children of the deceased and are rightful beneficiaries of his estate



4. The petitioners admitted that their mother was buried in Awasi and Dorine's mother was also buried in Uganda but they did not provide any proof of the same they further admitted that they included the parcel of land number Kisumu/Manyatta A/918 in this succession yet it did not form part of this estate since the said land belonged to their grandfather.

Issues

- a. Who can apply to administer a deceased person's estate.
- b. Whether the Grant issued and confirmed to the petitioner should be revoked.

Analysis and determination

(a) Who can apply to administer a deceased person's estate.

5. Section 66 of *Law of Succession Act* provides that:

“When a deceased has died intestate the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall without prejudice to that discretion, accept as a general guide the following order of preference-

- a) surviving spouse or spouses, with or without association of other beneficiaries;
- b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interest as provided by Part v;
- c) the Public Trustee; and
- d) Creditors:

Provided that, where there is [atrial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.”

6. In this case since the spouse was not alive the children of the deceased had priority to petition the court for letters of administration.

(b) Whether the Grant issued and confirmed to the petitioner should be revoked.

7. Guidelines on making of grants are found in Part VII Rule 26(1) and 2 of the *Probate and Administration Rules* which provides as follows:

Rule 26 (1) Letters of Administration shall not be granted to any applicant without notice to any other person entitled to the same degree as or in priority of the applicant.

- 2) An application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall, in default of communication, or written consent in Form 38 or 39, by all persons so entitled in equality or priority be supported by an affidavit of the applicant and such other evidence as the court may require.”

8. Further, Section 76 of *Laws of Succession Act* 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 any interested party or of its own motion



- (a) That the proceedings to obtain the grant were defective in substance;
- (b) That the grant was obtained fraudulently by making of a false statement or by concealment from the court of something material to the case;

(c) That the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently”

- 9. It therefore follows that in an application such as this, an Applicant must base his/her application for revocation on any of the grounds stipulated under the aforesaid provisions. In the circumstances of this case, the contention by the Applicant is that the Grant herein was obtained fraudulently as a result of the non-disclosure of information that the parcel of land number Kisumu/Manyatta A/918 in the succession did not form part of this estate since the said land belonged to their grandfather.
- 10. The objector also avers that the petitioners were not the biological children of the deceased neither did they stay in with the deceased during his lifetime and they only resurfaced after his death from their home in Awasi.
- 11. With regards to evidence on record I find that during the succession cause on the estate of Meshack's deceased father the petitioners were listed as grandchildren in the matter and the applicant did not object at that time. Therefore, I find that the petitioners were recognized as children to Meshack the deceased.
- 12. The petitioners admitted that the parcel number Kisumu/Manyatta A/918 was not their father's parcel but their grandfather's. They submit that the confirmed Grant can be rectified by removing the parcel from the deceased's estate.

Disposition

- 13. In the circumstances therefore, the said Grant of Letters of Administration and the following are the orders that commend themselves for the disposition of this Application:
 - a. The previous Grant of Letters of Administration issued to Sylvester Ochieng is revoked.
 - b. I issue an amended Grant of letters off administration jointly between the objector and the 1st petitioner.
 - c. Parties to file summons for confirmation of Grant within 30 days from the date hereof.

This matter is fixed for mention on 8th July 2024 to confirm whether parties have filed summons for confirmation of Grant.

DATED, SIGNED AND DELIVERED AT KISUMU ON THIS 31ST DAY OF MAY 2024.

MWANAISHA S. SHARIFF

JUDGE

