



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

SUCCESSION CAUSE NO.353 OF 2009

PETER ODEDE OMUSOLOOBJECTOR/APPLICANT

AND

PETER OKABININI IBELENYIPETITIONER

VERSUS

JESCA AMUKAGA APADETRESPONDENT

RULING

[1] The summons for revocation and annulment of grant dated 29th January 2016, was filed by the objector, **Peter Odede Omusolo**, on the basis of the grounds contained in the summons and the accompanying supporting affidavit also dated 29th January 2016.

In response to the summons, the petitioner **Jesca Amukaga Apadet**, filed a replying affidavit dated 16th September 2018.

The interested party, **Peter Okabinini Ibelenyi**, filed an affidavit of protest dated 5th February 2018, which was irrelevant and incompetent for the purpose of the present objection as it related to an earlier application for confirmation of grant made by the petitioner in respect of the grant of letters of administration intestate issued to her on 24th November, 2014, with regard to the estate of the deceased herein, the late **Ebu Omusoli**. This grant was amended on **6th October 2015**, such that the cause or case number appeared as succession cause No.353 of 2009 instead of succession cause No.353 of 2014. The name of the petitioner appeared as Jesca Amukoya Apadet, instead of **Amukaga Apadet**.

[2] This objection was therefore in respect of the grant issued to the petitioner on 24th November 2014 as amended on the 6th October 2015. The actual and proper parties to these objection proceedings are the objector and petitioner only. The interested party cannot be a proper party to these proceedings on account of his affidavit of protest dated 5th February 2018, which has noted hereinabove had no relevance to the objection. Therefore, the participation of the interested party in the proceedings was erroneous even though the record shows that on or about the 1st February 2009, a grant respecting the estate of the deceased was issued to him pursuant to a petition for the same made by himself. The record also shows that the grant issued to the interested party was revoked following an application in that regard made by one **Wenzeslaus Tebakol Okoro** and one **Romano Okoro**, with the support of the petitioner herein.

[3] As a result, the present grant dated the 24th November 2014 and amended on 6th October 2014, was issued to the petitioner following orders by the court and approved by the then objectors and petitioner (**interested party**) made on the 12th November 2014. In effect, the interested party was found to have obtained the previous grant irregularly and/or fraudulently. His removal as the administrator of the estate of the deceased apparently divested his interested in this matter as a beneficiary at the estate of the deceased but if he thought that he had a genuine claim to the estate, the remedy lay in an ordinary civil suit for an interest in the estate property and not in this succession cause.

Accordingly, the interested party is now removed as a party to these proceedings and his affidavit of protest dated 5th February 2018, and not 15th February 2018 is hereby struck out and dismissed.

[4] With regard to the objection which was argued by way of written submissions and affidavit evidence, the opinion of this court is that the objection is based on the fact that the objector is a son of the deceased who owned the estate property jointly with one Omusolo Okoro and Etyakoro Omusolo but was omitted as a beneficiary of the estate by the petitioner who, according to him, is a total stranger to the estate comprising of land parcel **No.South Teso/Asinge/55**.

The objector therefore desires to be included as a beneficiary of the estate and allocated 1.3 acres of the estate. The certificate of confirmation of grant dated 25th January 2016, was issued to the petitioner indicating that part of the estate measuring 3.18 hectares was distributed to her as the sole beneficiary.

[5] Apart from his lame allegations against the petitioner, the objector was unable to establish and prove by credible evidence that he is a son of the deceased, hence a proper and truthful beneficiary of the estate. He also failed to provide sufficient or any evidence to prove that the petitioner is actually unrelated to the deceased and a stranger to the estate of the deceased. However, it is evident from the search certificate filed herein on 1st March 2010, that the entire estate property measured 9.4 hectares and was issued by three people including Omusol Okoro, Etyakoro Omusol and Ebu Omusoli. Each one of them was entitled to 1/3 share of the land.

[6] This meant that the portion measuring 3.13 hectares which was distributed to the petitioner vide the material certificate of confirmation of grant was the deceased's share of that land and the deceased being a brother to the petitioner, the petitioner was a true beneficiary of part of the estate as the only surviving sibling of the deceased and his brother Etyakoro Omusol, both sons of Omusoli Okoro.

The estate property therefore belonged to a father and his two sons who were all survived by the petitioner, daughter of Omusoli Okoro and sister to Etyakoro Omusol and Ebu Omusoli. This implied that the petitioner was the sole beneficiary of the entire estate including the respective shares of her late father and late brothers.

[7] However, the fact that the petitioner settled on the share of the land owned by her brother Ebu Omusoli (**deceased**) was an indication that the shares owned by her father and the other brother Etyakoro Omusoli were not available for distribution to herself which therefore meant that she surrendered her right to inherit those shares to any other person who may have been a rightful beneficiary in respect thereof. Her interest in the estate was catered for by her inheriting the deceased's shares to the exclusion of any other person. The objector was not entitled to those shares of his deceased's uncle given that he was a son of the deceased's brother Etyakoro Omusolo and not a son of the deceased as alleged herein. Being a son of the deceased's brother, the objector is a rightful beneficiary of the shares of his late father in the estate property. He is also a rightful beneficiary of the shares of his late grandfather, Omusolo Okoro, father of his father (**Etyakoro**) and his uncle (**Ebu Omusoli**).

There was no substantial dispute from the petitioner to the fact that the objector is actually a son of her late brother (**Etyakoro**) and therefore, the nephew of their late brother Ebu (**deceased**) and also her nephew and grandson of their late father, Patriarch of the family.

[8] It would therefore follow that the objector being the beneficiary of the parts of the estate belonging to his father and grandfather, he is not a beneficiary of part of the estate distributed to his aunty (**petitioner**) in this cause which essentially related to grant issued to the petitioner and confirmed in her favour with respect to the shares of the deceased in the entire estate.

This objection or application for revocation of the grant is therefore without merit and is hereby dismissed with each party bearing their own costs.

Ordered accordingly.

J.R. KARANJAH

J U D G E

[DATED & DELIVERED THIS 15TH DAY OF MARCH 2022]



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