



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KITALE**

**SUCCESSION CAUSE NO. 78 OF 2013**

**IN THE MATTER OF THE ESTATE OF THE LATE NGEYWA CHEPKONUCH TULELACH.....(DECEASED)**

**SILVIA NEKO.....APPLICANT/OBJECTOR**

**VERSES**

**GREGORY KWEMOI NGEYWA & 2 OTHERS.... RESPONDENTS/PETITIONERS**

**RULING**

1. On the 15<sup>th</sup> September, 2016 this court amended the grant issued to GREGORY KWEMOI NGEYWA on 5<sup>th</sup> March, 2016 to include him and LILIAN CHEPTARUS NGEYWA, PHILISTA KARAENY and DISMUS CHEPTOROT as Administrators of the estate herein.
2. It appears that the registry on the said date namely 15<sup>th</sup> day of September, 2016 prepared a confirmed grant in the name of GREGORY KWEMOI NGEYWA as a sole Administrator of the estate. The Applicant/ Objector aggrieved by the said decision has filed this application dated 23<sup>rd</sup> May, 2019 in which she has prayed that the said grant be revoked as it was issued contrary to the provisions of Section 76 of the Succession Act.
3. She has further prayed that she be allowed to replace the late Lillian Ngeywa who has since died and they were from the same house. The applicant prays as well that all the resultant titles and any other process that may have taken place as a result of the grant erroneously issued be set aside. Her contention is in her supporting affidavit sworn on the same date.
4. The Respondents vide the Replying Affidavit of Gregory Ngeywa dated 21<sup>st</sup> June, 2019 has admitted the error contained in the confirmed grant and that he has no objection to the applicant coming in on behalf of her house and replacing Lilian.
5. The court has read the application as well as the court record and the submissions by the parties. It is apparent that there was no application for the confirmation of grant on record on the 15<sup>th</sup> September, 2016 when the court amended the grant so as to bring other Administrators. As a matter of fact, they came on board vide a consent.
6. If that was the case how did the Respondent have the grant confirmed in his name yet there was no pending application? Even if there was one, naturally it ought to have been in the joint names of the 4 Administrators. The Respondent seems to lay blame in the registry which may be true as the same emanated from there.
7. In the premises, this court agrees with the Applicant that the same was issued in error for the reason that there was no pending application for confirmation. Whatever the resultant use of the grant was illegal for all intent and purposes. Needless to state that there is no evidence that the same has been used adversely.
8. The other prayer to have the Objector replace the late Lilian Ngeywa is not opposed so as to take care of her household and same is allowed.
9. The Applicant has prayed that the grant be allowed in terms of prayer 18 and 19 of her affidavit. I do not find this prayer tenable for the simple reason that seeing the size and extent of the estate as well as the beneficiaries a proper application for the confirmation of grant with or without the concurrence of the other beneficiaries ought to be made. They will of course be notified in the usual manner.
10. For now, this court finds that the proceedings leading to the confirmation of grant were defective in substance pursuant to the provisions of section 76 of the Succession of Act and the same is hereby *revoked*. *The said Section states inter alia that:*

**“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 the making of a false statement or by the 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;”.**

11. The grant should and is hereby amended and issued to GREGORY KWEMOI NGEYWA, SILVIA NEKO, PHILISTA KARAENY, and DISMAS CHEPTOROT. Each of the Administrators be at liberty to apply for the confirmation of the grant accordingly.

12. Costs in the cause.

**Dated signed and delivered in open court at Kitale this 9th March, 2020.**

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**H. K. CHEMITEI**

**JUDGE**

**9/03/2020**