



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BUSIA**

**PROBATE & ADMINISTRATION NO.336 OF 2014**

**IN THE MATTER OF THE ESTATE OF: AYUB OMOLLO.....DECEASED**

**BETWEEN**

**JAMES EGESA LUANDE.....PETITIONER**

**AND**

**MARGARET MUKASA WAFULA.....OBJECTOR**

**RULING**

1. Margaret Mukasa Wafula the objector herein moved the court by way of summons for revocation of grant dated 14<sup>th</sup> March 2019 under sections 76 of the Law of succession Act and Rule 44 of Probate and Administration Rules. The application is premised on the following grounds:

- a. That the proceedings to obtain the grant were defective in substance.
- b. That the grant was obtained fraudulently by concealment from court material facts.
- c. That the grant was obtained by means of an untrue allegation of fact essential in point of law to justify the grant.

2. The application was opposed on grounds that:

- a. That the deceased left no surviving spouse, children or parents.
- b. That the petitioner ranks high in priority.
- c. That the objector is the deceased's sister in-Law.

3. Where a deceased person dies intestate and has left no surviving spouse or children section 39 (1) of the Law of Succession Act becomes operative. It provides as follows:

**Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority –**

**(a) father; or if dead**

**(b) mother; or if dead**

**(c) brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none**

**d) half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters, in equal shares; or if none**

**(e) the relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.**

4. At the time of filing this cause, the petitioner listed the following as having survived the deceased:

- a. James Egessa Luande- Nephew;
- b. Christina Mary Wafula – sister in-law;
- c. Lorna Achieno Opetu – Niece;
- d. Margaret Mukasa Wafula – sister in-law; and
- e. Merab Alungata Ondere – sister in-law.

5. Before the grant was confirmed, a consent for confirmation was filed and all the beneficiaries including the applicant had purportedly signed it. The purported signature of the applicant herein were initials M. M.W. This does not correspond with the signature she appended in the affidavit in support of summons for revocation. I am therefore satisfied that she did not sign the said consent. Probably the same applied to the other heirs listed.

6. I am persuaded to make a finding that the petitioner obtained the confirmation of grant by fraudulent means. Section 76 of the Law of Succession Act provides:

**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;**

**(d) that 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 one year from the date thereof, or such longer period as the court order or allow; 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 paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or**

**(e) that the grant has become useless and inoperative through subsequent circumstances.**

7. The grant that was confirmed on 15<sup>th</sup> February is hereby annulled. The title in respect of L.R No.Samia/ Luchululo- Bukhulungu/156 to revert to the original owner i.e. the deceased herein.

8. The petitioner and the objector herein are appointed co-administrators. I am directing that they file the necessary application for confirmation within 30 days. Failure to do so, the appointment will automatically be revoked.

9. Costs of this application be borne by the petitioner.

**DELIVERED and SIGNED at BUSIA this 22<sup>nd</sup> day of July, 2020**

**KIARIE WAWERU KIARIE**

**JUDGE**