



**REPUBLIC OF KENYA**

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

**PROBATE & ADMINISTRATION NO. 28 OF 2015**

**IN THE MATTER OF THE ESTATE OF:**

**JOHN RICHARD IMO EKIRAPA.....DECEASED**

**BETWEEN**

**1. ALBERT A. EKIRAPA**

**2. HUMPHREY EKISAI EKIRAPA.....PETITIONERS**

**AND**

**JANE ASAMI OMBAYA.....OBJECTOR**

**RULING**

1. Jane Asami Ekirapa, the objector herein, filed summons for revocation of the grant dated 15<sup>th</sup> February 2016 under section 76 of the Law of Succession Act, Rules 44, 49 and 73 of the Probate and Administration Rules. The application was 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 making of false statements or by concealment from the court of something material to the case.
- c) That the grant was obtained by means of 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 grant has become useless and inoperative through subsequent circumstances.
- e) The objector's consent to the applying of the grant was never sought or obtained by the petitioners.
- f) That the petitioner is a widow of the deceased ranking in priority to the petitioners and was issued with a grant on 3<sup>rd</sup> June 2015 before the one herein was issued.

2. The petitioners have opposed the application on the following grounds:

- a) That they were appointed administrators through a will.
- b) That both of them have no interest in the estate of their late brother.

3. Prior to the grant herein being issued, the petitioners exhibited a copy of the will which they claimed gave them authority to petition for the issuance of the grant. Instead of filing an objection, the objector ought to have moved the court under section 70 of the Law of Succession Act to test the authenticity of the will. The section provides:

**Whether or not there is a dispute as to the grant, every court shall have power, before making a grant of representation—**

**(a) examine any applicant on oath or affirmation; or**

**(b) call for further evidence as to the due execution or contents of the will or some other will, the making of an oral will, the rights of dependants and of persons claiming interests on intestacy, or any other matter which appears to require further investigation before a grant is made; or**

**(c) issue a special, citation to any person appearing to have reason to object to the application.**

4. Upon my perusal of the affidavit of the applicant and that by the respondent, I find that none of the grounds raised by the objector has been proved. I am therefore directing that the parties herein to take a date within 30 days of this ruling for interrogating whether the will is authentic or not, if the same is being disputed.

5. The objection is dismissed. Each party to meet own costs.

**DELIVERED and SIGNED at BUSIA this 30<sup>th</sup> day of April, 2019**

**KIARIE WAWERU KIARIE**

**JUDGE**