



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KITUI**  
**SUCCESSION CAUSE NO. 793 OF 2014**  
**IN THE MATTER OF THE ESTATE OF MM DECEASED)**

**AND**

**JMM.....APPLICANT**

**VERSUS**

**MTM.....1<sup>ST</sup> RESPONDENT**

**MM.....2<sup>ND</sup> RESPONDENT**

**R U L I N G**

1. By a consent letter dated **22<sup>nd</sup> September, 2015**, a Grant of Letters of Administration Intestate (grant) in respect of the Estate of **MM** were issued to **MTM** and **MM**. Subsequently the grant was confirmed on **3<sup>rd</sup> March, 2016** and the shares of each beneficiary identified pursuant to the consent entered into by the parties and endorsed by the Court.

2. On the **5<sup>th</sup> January, 2018**, **JMM**, one of the beneficiaries to the Estate filed summons for revocation of the grant so as to be appointed as the Legal Administrator of the Estate to complete the process of administration.

3. The Application is premised on grounds that **MTM** who developed a mental problem has since been missing and a report has been made to the police; **MM**, the 2<sup>nd</sup> Administrator has been taken ill and is unable to undertake strenuous exercises; the grant issued has become inoperative and useless yet the process of administration is still incomplete; and an active administrator is urgently required to complete the process of transmission of titles as was agreed by the beneficiaries.

4. In an affidavit in support of the application, the Applicant deposed that the Deceased, her father was survived by the following children:

- **MM.**
- **MM.**
- **CKM.**
- **JKM.**
- **CTM.**
- **KM.**
- **NM.**

And he had two wives:

- **KM** – Now Deceased.

· **MTM** – Alive.

5. That MTM having developed mental problems was seen at Mathari Mental Hospital and other medical facilities and confirmed to be mentally unstable; and she has gone missing whereby a report was made to **Mwiki Police Station**. A further report was done through media to no avail.

6. That the 2<sup>nd</sup> Administrator has been ailing such that she is incapable of engaging in the strenuous exercise of completing transmission of titles to the individual beneficiaries which is the only thing remaining after distribution was approved by Court.

7. The Application is unopposed. The 2<sup>nd</sup> Respondent's Counsel was granted time to file the response but he failed and/or neglected to do so.

8. Circumstances in which a grant may be revoked are stipulated by the provisions of **Section 76** of the **Law of Succession Act** which provides thus:

*“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) .....*

*(b) .....*

*(c) .....*

*(d) .....*

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

9. **Rule 73** of the **Probate and Administration Rules** provides thus:

*“Nothing in these Rules shall limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.”*

10. The grant herein was issued and the Estate distributed amongst the beneficiaries equitably on the **22<sup>nd</sup> September, 2015**. Three (3) years and nine (9) months have lapsed from then. It has been demonstrated that no action has been taken to complete the process of administration because the 1<sup>st</sup> Administrator lacks the capacity to do it and the 2<sup>nd</sup> Administrator is ailing. Other beneficiaries have consented to the Applicant obtaining Letters of Administration for purposes of completion of the task.

11. Since the process of administration must be concluded it will be in the interest of justice to issue a fresh grant to a person who is capable of taking up the task. In the premises I find the Application that is unopposed being meritorious.

12. Therefore, I do revoke the grant issued herein and issue a fresh grant to the Applicant herein, **JMM** for purposes of completing distribution of the Estate in accordance with the consent recorded by the parties herein.

13. It is so ordered.

**Dated, Signed and Delivered at Kitui this 27<sup>th</sup> day of June, 2019.**

**L. N. MUTENDE**

**JUDGE**