



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 73 OF 2008**

**In the Estate of ALITO M'NKUMBUKU KAUKA (Deceased)**

**ROMANO MWENDA KAUKA.....PETITIONER**

**VERSUS**

**PAULINE NKATHA M'ELONGI.....OBJECTOR**

**RULING**

**Revocation**

[1] Under Section 76 of the Law of Succession Act: -

***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.***

[2] The widow of the deceased, Pauline Nkatha M'Elongi informed the court that she has been dispossessed of and evicted from the estate of her late husband by the petitioner. She stated that the petitioner destroyed her house and sold the entire land to third parties. She complained that she has no shelter over her head despite the deceased having left her land and house. The petitioner is the eldest son of the deceased. He denied these allegations and kept on engaging delaying tactics. The chief was summoned and he confirmed that the petitioner had destroyed the house of her mother and sold the entire estate to third parties. The court ordered the petitioner to construct a house for the widow-his mother. He was committed for contempt but released on bond. The petitioner thereafter absconded allegedly to Tharaka. A warrant of arrest was issued but has never been executed.

[3] On 12<sup>th</sup> November, 2019, one of the purchasers, one Cyprian Gitirime Nabea appeared before court and stated that he bought land from the widow. The widow denied this allegation. He did not however have any agreement or note thereof to show that he bought the land. I have also received a letter by Tabitha Ituutu dated 20<sup>th</sup> November 2019 in which she claims to have bought land from the widow herein. But, that

the widow is now conspiring with the area chief of Maranga one David Kibore MAnampiu to defraud her of her purchase price. She stated that she only claims her money back.

[4] These claims may be true. If true, the widow and the chief have engaged in intermeddling with the estate as well as fraud upon the persons concerned. Such are serious allegations and I direct the DCI, Meru to investigate these claims against the widow and the chief.

[5] Be that as it may, the Certificate of Confirmation of Grant herein shows that the widow was not provided for. I wonder what land the purchasers could have bought from the widow when she had not been given any beneficial interest in the estate. I should sound a warning to the people of Meru that due diligence is critical before one buys land especially if it is being sold under a grant of letters of administration. It has become quite prevalent here for unscrupulous individuals to sell estate property knowing too well that the transaction offends the law. Later, they come to court and seek the shield of the law. I should think that such conduct should be dealt with firmly by court through criminal process provided in the law of succession Act as well as the penal code. Such individuals should also be sued for refund of the purchase price with interest or for lost investment opportunities. We do say these things because we want to, but because of the offending conduct I have encountered on such matters.

[6] In the meantime, evidence available show that the petitioner sold the entire estate to third parties. There was a resulting trust for the minor beneficiaries. I wonder what became of the resulting trust for the minors. This is a potent ground for revocation of grant.

[7] I also note that the petitioner at some point applied to have a Mr. Isaya Gitonga appointed a co-administrator because there were minor beneficiaries. The said Isaya was not a direct beneficiary. Surprisingly, he provided land to the said Isaya.

[8] The widow has priority in applying for letters of administration. The widow stated that the petitioner applied for grant without her knowledge. It appears that the petitioner took it upon himself to apply for letters of administration and also caused the appointment of Isaya in order to perfect a fraud on the other beneficiaries including the widow. He caused appointment of a stranger for purposes of resulting trust for minor beneficiaries. But, it seems all these were his calculated design to do things his way and without any accountability. He concealed important facts. In the circumstances, under Section 76 of the Law of Succession Act CAP 160 of the Laws of Kenya, I find: -

*(a) The proceedings to obtain the grant were defective in substance;*

*(b) 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) 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*

[9] In the circumstances of this case, I find the case of **SAMUEL WAFULA WASIKE vs. HUDSON SIMIYU WAFULA CA NO.161 OF 1993** (Kwach, Omolo and Tunoi JJA) to be relevant where it was held that:-

*“A grant obtained on the strength of false claims, without obtaining the consent of persons who had prior right to the grant and on the basis of facts concealed from the court, is liable to revocation.”*

[10] In the upshot, I revoke the grant herein. I now appoint the widow to be the administrator of the estate of the deceased. She will file summons for confirmation of the grant within 30 days and serve upon all the parties. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MERU IN OPEN COURT THIS 27<sup>TH</sup> NOVEMBER, 2019**

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**F. GIKONYO**

**JUDGE**

**In presence of**

Applicant – present

Purchasers – present

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**F. GIKONYO**

**JUDGE**