



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

**MISC. SUCCESSION CAUSE NO. 26 OF 2018**

***RE ESTATE OF MARK MADEGWA LIHALO (DECEASED)***

**GRACE MUHAMBE MADEGWA.....PETITIONER**

**VERSUS**

**SOLOMON MANDEGWA AGANYANYA.....OBJECTOR**

**RULING**

1. The summons for revocation or annulment of grant is dated **3<sup>rd</sup> September 2018** and urges this court to order a temporary stay of execution of the certificate of confirmation of grant issued on **18<sup>th</sup> July 2017**. Further that the court do call for Kapsabet **SPM SUCC. Cause No.46 of 2016** so as to make further orders.

Upon such perusal then the confirmed grant in the Kapsabet Cause No.46 of 2016 be revoked and/or annulled.

2. The application is premised on ground that the proceedings in the Kapsabet Cause were defective in substance and the grant was obtained fraudulently by the petitioner who made false statements and concealed material facts from the court.

3. Further that the grant should not have been confirmed without the applicant being notified.

4. The applicant deposed in his Supporting Affidavit that the late **MARK MADEGWA LIHALO** was his father while the Petitioner/Respondent, one **GRACE MUHAMBE MADEGWA** is his step – mother. When she petitioned for grant of letters of administration she presented to the court a document purporting signed by all the beneficiaries, yet there was no such consent, obtained nor were the beneficiaries present at the confirmation. It is the appellants contention that the Petitioner never served him with any papers relating to the cause much less any document regarding the beneficiaries to indicate their consent by signing.

5. The applicant is of the view that the petitioner intended to deny him his rightful inheritance from his father's estate, pointing out that the petitioner did not apportion to him any share. Upon realizing what was going on, a family meeting was convened and that is when the applicant sought the services of share out the land. He then learnt that the land had already been distributed to other people through the succession proceedings.

6. The applicant has reported the matter of fraud to police as per the letter dated 18<sup>th</sup> August 2017 signed by **ABUYEKA ARIWO** for the Directorate of Criminal Investigation – **NANDI CENTRAL** which is addressed to Senior Principal Magistrate at Kapsabet Law Courts and reads **SUCCESSION CAUSE NO.46 OF 2016 NANDI/KAPKANGANI/2302**

**“We write to inform you that we are in receipt of a complain (Sic) in respect of the above indicated parcel kindly but urgently furnish us with documents used in filing the above mentioned Succession cause to enable us arrive at a fair determination of this matter.”**

7. Although the applicant had presented a letter from the chief listing all the deceased's beneficiaries, when the certificate of confirmation of grant was issued the property **NANDI/KAPKANGANI/2302** was distributed among the persons named in the chiefs' letter but excluded the applicant and four other family members.

She also presented form P & A 38 (consent to the making of the grant) which was purportedly signed by all the beneficiaries to the estate conceding the petitioner apply for grant of administration. This is what he denies signing.

It is of course instructive that the Respondent filed no response nor did she attend hearing of the said consent did not contain any proposed mode of distribution. It is therefore imperative that Kapsabet P & A Succ. Cause No. 46 of 2016 be availed to enable me peruse and clarify a few concerns, before making a conclusion, By a copy of this ruling the Deputy Registrar is directed to immediately call for the said Kapsabet P & a Cause within 5 days hereof and the same be placed on my desk for perusal and further orders to be issued on 11<sup>th</sup> October, 2018.

**DATED, SIGNED and DELIVERED at ELDORET this 28<sup>th</sup> day of September 2018.**

**H. A. OMONDI**

JUDGE