



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**SUCCESSION CAUSE NO.513 OF 2012**  
**IN THE MATTER OF THE LATE M M G (DECEASED)**  
**RABECA MBITHE MUTUA .....PETITIONER**  
**VERSUS**  
**L N G .....OBJECTOR**

**RULING OF THE COURT**

1. The Objector/Applicant has filed a Summons for Revocation of a Grant dated 16/08/2013 seeking for the following reliefs:-

*(a) That the grant of probate or letters of administration issued to the Petitioner/Respondent be revoked and or annulled forthwith.*

*(b) That Petitioner preventing her from remaining thereof, selling, disposing, alienating, constructing or putting up structures or in any other way from interfering with or meddling with land parcel Number KAJIADO/KAPTIEI/NORTH/[particulars withheld].*

The Application is brought pursuant to Section 45, 47 and 76 of the law of Succession Act and (2) and 73 of the Probate and Administration Rules. The Application is supported by an annexed affidavit of the Objector sworn on even date and further on the following grounds:

*(a) That the Objector is the mother of the deceased.*

*(b) That the deceased was survived by her two (2) children L N M (24 years) and K K M (15 years) brothers and sisters.*

*(c) The Petitioner is not in any way related to the deceased and is a stranger opt the estate.*

*(d) The Petitioner did not disclose to the court the children of the deceased and other beneficiaries to the estate.*

*(e) The grant was therefore obtained by concealment of material facts and proceedings to obtain the grant was defective in substance.*

*(f) The Objector and other beneficiaries are willing to petition for grant of letters of administration to the estate of the deceased.*

*(g) The Objector was not served with any citation papers to compel her to take out letters of*

*administration.*

*(h) That it will be in the interest of justice that the orders sought are granted.*

2. The Application is opposed by the Petitioner/Respondent on the following grounds:-

*(i) That the Objector is not truthful and candid as she has been aware of this matter all along including the Petitioner's agreement with deceased as well as objector being cited in a citation lodged by the Petitioner herein.*

*(ii) That the Petitioner has incurred a lot of expenses in filing the citation and is interested in obtaining Title to the land she bought and that the Objector could take up letters of administration upon paying her costs since she had been aware of this matter all along.*

*(iii) That the deceased entered into the sale agreement as an adult and the purchase price fully paid to her and her bankers.*

*(iv) That the Objector's Application has been brought in bad faith to frustrate the Petitioner from acquiring title to property which she genuinely bought from the deceased in which her family including the Objector and brother were all aware.*

*(v) The Objector's Application should be rejected and the grant be confirmed.*

3. Parties filed written submissions. It was submitted for the Objector that the citation was never served upon Objector and other beneficiaries but who are now willing to petition for letters of grant of administration. It was further submitted that the title to property purportedly sold had been charged to a bank and was not therefore free for sale. Further it was submitted that the Petitioner did not disclose that the deceased had left behind two (2) children and the non – disclosure calls for revocation of grant as it was a material fact. It was also submitted for the Objector that **KAJIADO KAPUTIEI/[particulars withheld]** was the only property the deceased left behind and same cannot be transferred to Petitioner to the detriment of the children of the deceased. Finally it was submitted that there was conflict of interest by the Counsel for Petitioner since they acted for deceased and Petitioner in the sale transaction and is now representing the Petitioner and which calls for revocation of grant and the beneficiaries to file proper Petition so that the Petitioner could ventilate her claim to the property by filing affidavit of protest.

4. It was submitted for the Petitioner that the filing of the Petition was properly done since the Objector had been named as a beneficiary by virtue of being mother to the deceased as the issue of presence of children had not been disclosed by the Objector. It was further submitted for the Petitioner that the Application is meant to delay justice and to prevent the Petitioner from acquiring land she legitimately bought from the deceased and therefore the Petitioner should remain the Petitioner and the land be transferred to her names.

5. I have considered the Objector's Application and the rival affidavit as well as the annexures. I have also considered the submissions of the learned counsels for the parties herein. It is not in dispute that the Petitioner herein and the deceased had entered into a sale agreement over parcel number **KAJIADO KAPUTIEI/[particulars withheld]** and that what remained was for transfer of ownership before the deceased subsequently passed on. It is also not in dispute that the Petitioner had filed a citation wherein she had cited the Objector herein who is mother to the deceased to take up letters of administration on the estate of the deceased. It is also not in dispute that the Petitioner was granted the go ahead to petition for letters of grant which were issued to her on 16/08/2012 after the Objector failed to come on board and take up letters of administration. It is also not in dispute that the Objector has now decided to come on board and wants to be allowed to take up the letters of grant of administration. The issue for determination at this stage is whether or not the grant issued to the Petitioner herein should be revoked and or annulled pursuant to the Provisions of Section 76 of the law of Succession Act. The main ground relied upon by the Objector is that she was not served with the citation as claimed by the Petitioner and further that the deceased left behind two (2) children who ought to be considered during confirmation of

the grant. I have perused the record and documents presented by the Petitioner and note that the Objector had been duly served with the citation papers and even she had instructed a counsel to enter an appearance on her behalf but failed to appear for the hearing of the citation which proceeded and the Petitioner allowed to petition for grant. A gazette notice was duly issued and no objections were presented within the requisite period and thus the Petitioner was issued with a grant of letters of administration. The Petitioner filed Summons for Confirmation of grant and it is then that the Objector moved to this court seeking for revocation of grant. Under those circumstances I am unable to fault the Petitioner since she had honestly believed that the Objector being the deceased's mother was the only surviving relative and with whom she had engaged over the issue of the land the subject of the sale. The Petitioner, being a creditor was legitimately entitled to file for letters of grant after the Objector snubbed the citation proceedings. Under Section 66 of the Law of succession, it is stated thus:-

***“Where a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion accept as a general guide the following order of preference-***

***(a) Surviving spouse or spouses or without association of other beneficiaries.***

***(b) Other beneficiaries entitled in intestacy, with priority according to their respective beneficial interests as provided by part V.***

***(c) The Public Trustee.***

***(c) Creditors.”***

6. Under Section 66(b) the children of the deceased according to Section 35 and 38 of the act rank after those of a surviving spouse.

7. Now that the Objectors has come on board albeit late in the day after she had been cited by the Petitioner and due to the fact that the Petitioner had properly been allowed by court to petition for letters of grant and this court bearing in mind the Provisions of Section 66, 35, 38 and 39 of the Law of Succession Act, regard must now be had to the Provisions of Rule 73 of the Probate and Administration Rules. The said Rule provides as follows:-

***“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.”***

8. As the Objector who had earlier on been cited has now agreed to take up letters, it is appropriate that she be allowed to take up the role of Administrator of the estate so as to be in a position to address the Petitioner's concern on the issue of the transfer of ownership of the parcel of land she had bought from the deceased.

9. As regards the issue of conflict of interest on the part of the Petitioner's Advocate on these proceedings, I note that both the deceased and Petitioner had engaged the services of J. A. Makau Advocate in the conveyancing brief over the property on their behalf and there was absolutely nothing wrong since the parties to the sale transaction had trusted his legal services. In any event there is no complaint raised as to the lawyer's professional services upto the point the deceased passed on.

10. As regards the Objectors claim that the sale transaction did not get the blessing of the Land Control Board Consent, I find that issue would be canvassed at the time when the Petitioner shall be proving her claim against the estate over the land purchased

11. In view of the foregoing it is imperative that the grant must be revoked so that a fresh one is issued to the Objector who shall thereafter proceed to file for fresh Summons for Confirmation of Grant and in

which the Petitioner shall be served and be at liberty to file affidavit of protest if need be. The following orders are hereby made:-

***(1) The Grant of Letters of Administration Intestate issued to REBECCA MBITHE MUTUA on the 6/8/2012 is hereby revoked and a fresh grant be issued in the name of L N G.***

***(2) The new Administrator L N G to file fresh Summons for Confirmation of Grant within sixty (60) days from the date hereof and to serve upon REBECCA MBITHE MUTUA who shall be at liberty to file affidavit of protest if need be.***

***(3) The status quo in regard to land parcel KAJIADO KAPUTIEI/[particulars withheld] be maintained.***

***(4) The costs of this Application shall be borne by the Objector/Applicant.***

It is so ordered.

Dated, Signed and Delivered at MACHAKOS this 29<sup>th</sup> day of MAY 2017.

**D. K. KEMEI**

**JUDGE**

**In the presence of:**

Mutua Makau for Petitioner

Mbugua for Sila for Objector

C/A – Kituva

**D. K. KEMEI**

**JUDGE**

**29/05/2017**