



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MALINDI**

**SUCCESSION CAUSE No. 120 OF 2015**

**IN THE MATTER OF THE ESTATE OF JOHNSON OTIAYE WAMBOGO.....DECEASED**

**ALBERT MUNGWANA PHILIP.....APPLICANT/OBJECTOR**

**VERSUS**

**MARY NYACOMBA KINARO.....RESPONDENT/PETITIONER**

**RULING**

**[Summons for Revocation of Grant dated 25<sup>th</sup> April, 2017]**

1. The Applicant/ Objector, Albert Mungwana Philip through the summons for revocation of grant dated 25<sup>th</sup> April, 2017 seeks a revocation of the grant made on 16<sup>th</sup> May, 2016 and confirmed on 24<sup>th</sup> November 2016 to Mary Nyacomba Kinaro, the Respondent/Petitioner.
2. The Objector's case as gleaned from the supporting affidavit and the exhibits annexed thereto is that he is the administrator of the estate of one Filipino Wambogo Okusimba alias Philip Aboko having been granted letters of administration vide Mombasa High Court Succession Cause No. 325 of 2015. His averment is that his late father was the owner of a house without land on Plot No. 1389 in Malindi from 1966 in respect of which an annual rent of Kshs. 2,400 was paid to the proprietor Said Seif Bin Salim or his estate.
3. It is his case that the husband of the Petitioner one John Otiaye Okumu alias Wambogo was one of the tenants in the property in question having entered the premises in 2010. According to the Objector, the Petitioner moved the court vide this cause in 2015 and obtained letters of administration in respect to the estate of her deceased husband. The properties disclosed in the Petitioner's petition for letters of administration were house without land on Plot No.1389 at Malindi and Bajaj Boxer motorcycle Reg. No. KMDJ 448P. The Objector's case is that the house on Plot. No. 1389 Malindi does not belong to the husband of the Petitioner and neither was the deceased husband of the Petitioner related to his father.
4. The Objector wonders how the grant was issued and confirmation done without any evidence from the Petitioner that her husband was indeed the owner of the plot and the motorcycle.
5. The Objector's position is that the grant was obtained by the Petitioner fraudulently and the same should be revoked.
6. The Petitioner opposed the application through a replying affidavit sworn on 8<sup>th</sup> May, 2017 by her

advocate, Stephen Obaga Muriuki. The Petitioner's position is that the grant was lawfully issued and the Objector never raised any issues. The Petitioner contends that the documents the Objector is relying on in support of ownership of the plot are of dubious authenticity. Further, that the Objector's application has been overtaken by events as the plot has already been sold to a third party. It is the Petitioner's averment that the instant application is the Objector's way of frustrating justice in Malindi ELC No.9 of 2017 in which he is the defendant and the purchaser of the property is the plaintiff. The Petitioner asserts that the Objector can only challenge the ownership of the property in the ELC case.

7. The question is whether the Objector has met the conditions for revocation or annulment of a grant. Section 76 of the Law of Succession Act, Cap.160 provides for revocation or annulment of a grant of representation:

- a. if the proceedings to obtain the grant were defective in substance,
- b. where the grant is obtained fraudulently by false statement or concealment of something material to the case,
- c. if untrue allegation of fact is made, whether intentionally or not, to justify the grant,
- d. where there is failure to apply for confirmation of grant within one year,
- e. where there is failure to diligently administer the estate,
- f. when there is production of false account, and
- g. when the grant has become useless or inoperative through subsequent circumstances.

8. The Objector has placed before this court documents which on the face of it shows that Plot No. 1389 Malindi which the Petitioner listed as one of the properties left behind by the deceased Johnson Otiaye Okumu alias Wambogo belonged to another person. The Petitioner alleges that the documents exhibited by the Objector are of dubious authenticity but failed to adduce evidence to support her allegation. The record shows that at the time of applying for the grant, the Petitioner did not exhibit any document in court showing that the plot belonged to her late husband.

9. The grant herein was thus issued based on paucity of information. Riding on that is the unsupported averment that the property belonged to the deceased husband of the Petitioner. The Objector has thus established that there is need to revoke the grant issued to the Petitioner. His application succeeds and the grant is revoked.

10. This is a unique matter in that the Objector does not seek to be appointed administrator of the estate of the deceased herein. The Petitioner is therefore at liberty to move the court for appropriate orders. The Objector shall have the costs of the objection proceedings from the Petitioner/Respondent.

**Dated, signed and delivered at Malindi this 28<sup>th</sup> day of Sept., 2017.**

**W. KORIR,**

**JUDGE OF THE HIGH COURT**