



**IN THE HIGH COURT OF KENYA**

**AT BUSIA**

**PROBATE & ADMINISTRATION NO. 157 OF 2011**

**IN THE MATTER OF THE ESTATE OF:**

**NAFTALI ODIWOUR ANDERE.....DECEASED**

**BETWEEN**

**JERUSA AUMA OGOLA.....PETITIONER**

**AND**

**1. BELDINA APONDI ONYANGO**

**2. RODAH ANDERE OWOL**

**3. JULIA ACHIENG RADOLI**

**4. REUBEN OPONDO ODWORI .....OBJECTORS**

**RULING**

**BELDINA APONDI ONYANGO, RODAH ANDERE OWOL, JULIA ACHIENG RADOLI and REUBEN OPONDO ODWORI**, the objectors herein filed an application dated 1<sup>st</sup> April 2016 for revocation of the grant issued on 10<sup>th</sup> October 2011 and confirmed on 7<sup>th</sup> November 2013. The application was brought under section 76 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules. The application was premised on the following grounds:

1. That the grant was obtained fraudulently.
2. That the grant was obtained by means of untrue allegations of essential facts.
3. That the petitioner has pursuant to the said grant sub divided **L.R NO.MARACHI/KING'ANDOLE/47 into MARACHI/ KING'ANDOLE/2605 AND 2606**

The application was opposed by the petitioner/ respondent who contended that the first to the third objector were not provided for by their deceased father while the fourth objector had deserted home. The petitioner further contended that this court lacked the jurisdiction to entertain this application.

Revocation and annulment of grants is provided for under section 76 of the Law of Succession Act. It provides as follows:

*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.*

This section makes it very clear that this court has jurisdiction to entertain the current application.

Though the petitioner opposed the application, in her application, I noted that she omitted a number of heirs but whom she acknowledged in her replying affidavit to the objection. She also acknowledged that part of the estate was left out of distribution.

From the evidence on record, I find the application merited. The grant is hereby revoked and all the beneficiaries should be included in the subsequent proceedings.

The application is allowed with costs.

**DELIVERED and SIGNED at BUSIA this 18<sup>th</sup> day of October, 2017**

**KIARIE WAWERU KIARIE**

**JUDGE**