



IN THE HIGH COURT OF KENYA AT BUSIA

PROBATE & ADMINISTRATION NO. 101 OF 2009

IN THE ESTATE OF ODWORI MUSUMBA.....DECEASED

BETWEEN

KELESENJIA AGUTU MUSUMBA.....PETITIONER/RESPONDENT

AND

EVANS M NANDERIA.....OBJECTOR /APPLICANT

RULING

EVANS M NANDERIA, the objector herein filed an application dated 16th August 2016 for revocation and annulment of the grant dated 31st May 2010 premised on the following grounds:

1. That the grant was obtained secretly and without involving all beneficiaries.
2. The petitioner did not disclose a full list of beneficiaries.
3. That the petitioner concealed to the court material particulars.

The application was opposed by the petitioner who claimed that she ranked first in priority.

I have perused the affidavits of both parties. The following facts have emerged:

1. That the late Odwori Musumba held land parcel number **BUKANGALA 'B'/201** in trust for his siblings.
2. That the deceased was not survived by any child or spouse.
3. That the petitioner had left out some beneficiaries who include the objector.
4. That the petitioner withheld some material facts from the court when applying for the grant.

Section 76 of the Law of succession 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.

I therefore find that the objection is merited. The grant is annulled and the petitioner is hereby ordered to include all the beneficiaries in the distribution of the estate. This being a family matter, each party will meet own costs.

DELIVERED and SIGNED at BUSIA this 18th day of October, 2017

KIARIE WAWERU KIARIE

JUDGE