



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**SUCCESSION CAUSE NO. 720 OF 2008**

**IN THE MATTER OF THE ESTATE OF NZUTA MUTAVI MAANDU (DECEASED)**

**VERONICA MUTHOKI NTHUTA.....PETITIONER**

**VERSUS**

**JAMES KYALO KIVUVA.....OBJECTOR**

**RULING**

The Objector has made an application to this Court through a summons dated 16<sup>th</sup> December 2014, wherein he was seeking orders of revocation against the grant of letters of administration intestate issued to Veronicah Muthoki Nthuta on 30<sup>th</sup> August 2000 and confirmed on 2<sup>nd</sup> March 2010 with respect to the estate of **Nzuta Mutavi Maandu alias** Nthutha Mutavi (“the deceased”). The grounds put forward for the application were that the grant was obtained by making of a false statement or concealment of something material to the case from the court. Further, that the proceedings to obtain the grant were defective in substance, and that the grant was obtained by means of untrue allegation of facts.

The Applicant further filed an affidavit in support sworn on 27<sup>th</sup> November 2014 wherein he averred that he is a purchaser for value of a portion of land measuring 180 metres by 160 meters of the parcel of land number Nzau/Ikangavya/33, having bought the same from the deceased Nthutha Mutavi. He further averred that the Petitioner had been aware of the sale but had deliberately failed to inform the court of his interest in the land parcel number Nzau/Ikangavya/33. The objector attached the sale agreement and schedule as evidence.

The Objector’s Advocates, Kamolo & Associates Advocates filed submissions dated 12<sup>th</sup> November 2015, wherein it was argued that the Petitioner had been a witness at the said sale transaction for land parcel number Nzau/Ikangavya/33, and had subsequently failed to disclose the Objector’s interest in the land before the confirmation of grant. It was prayed that the grant be revoked having been obtained by means of untrue allegation of facts.

The Petitioner did not file any response to or submissions on the Objector’s application.

I have read and carefully considered the pleadings and submissions made by the Objector. The issue to be decided is whether the Petitioner’s confirmed grant of letters of administration should be revoked. This court has jurisdiction to revoke or annul the grant as is clearly set out in section 76 of the Law of Succession Act (Chapter 160 of the Laws of Kenya) which 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 has ordered or allowed; 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.”**

In the present application the Objector has brought evidence of the sale agreement entered into with the deceased with respect to a portion of land belonging to the deceased estate, and he claims that the Petitioner was a witness to the said transaction. It is shown in the documentation provided by the Objector that one Veronica did receive payments with respect to the sale of the said portion of land. The position of purchasers of a deceased's property during his or her lifetime is protected by section 66 of the Law of Succession Act, which recognises creditors as persons to whom a grant of representation with respect of the estate of a deceased person can issue. The interests of creditors are therefore capable of protection during the administration and distribution of a deceased's estate.

I therefore find arising from the events as explained in the foregoing that there was concealment of material facts or untrue allegations made by the Petitioner during the confirmation of grant. However, the revocation of the grant of representation issued to the Petitioner will not serve any practical and useful purpose, as the actual distribution of the estate is done during confirmation of grant, and it is only the confirmation that is therefore amenable to revocation. It is accordingly ordered as follows:

1. The certificate of confirmation of the grant of letters of administration intestate issued to Veronica Muthoki Nthuta, the Petitioner herein, dated 2<sup>nd</sup> March 2010 be and is hereby revoked.
2. The Petitioner herein shall file and serve fresh summons of confirmation of grant that shall take into account the interests of the Objector within 60 days of the date of this ruling.
3. **The Objector shall thereupon file and serve his affidavit of protest if need be to the Petitioner's summons for confirmation of grant within 30 days of service.**
4. **The hearing of the summons for confirmation of grant and affidavit of protest shall proceed by way of *viva voce* evidence.**
5. **The *status quo* obtaining as at the date of this ruling with respect to the occupation and possession of the properties belonging to the estate of the deceased Nzuta Mutavi Maandu alias Nthutha Mutavi shall continue to obtain and be maintained pending the hearing and determination of the summons for confirmation of grant and affidavit of protest. There shall however be no further transfer of the said properties, and/or further destruction, wastage, and/or development on the same by the Petitioner, and/or her agents and servants, pending**

**the hearing and determination of the said summons for confirmation of grant and affidavit of protest.**

There shall be no order as to costs.

The Objector shall serve these orders on the Petitioner within 14 days of the date of this ruling.

Orders accordingly.

Dated, signed and delivered in open court at Machakos this 15<sup>th</sup> day of March 2016.

**P. NYAMWEYA**

**JUDGE**