



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KAKAMEGA**  
**SUCCESSION CAUSE NO.903 OF 2007**

**JACKSON M. WASILWA .....PETITIONER**

**VERSUS**

**VIOLET NEKESA WASILWA.....RESPONDENT/LEGAL ADMINISTRATOR**

**AND**

**SALOME NAMBUYE WASILWA .....OBJECTOR/APPLICANT**

**RULING**

**Introduction**

1. The deceased herein WASILWA KISEMBE died on the 13<sup>th</sup> March 1988 at Kivaywa within the Republic of Kenya. After applying for Letters of Administration intestate of the deceased's estate JACKSON MASENGELI WASILWA was appointed administrator by this Court on the 13<sup>th</sup> December 2007. The appointment of Jackson Masengeli Wasilwa was revoked and/or annulled after VIOLET NEKESA WASILWA made an application dated the 24<sup>th</sup> May 2010. VIOLET NEKESA replaced JACKSON M. WASILWA as the administrator of the deceased's estate on the 2<sup>nd</sup> July 2012.

**The Application**

2. SALOME NAMBUYE WASILWA has now filed Summons for revocation of grant to revoke and/or annul the grant of letters issued to VIOLET NEKESA WASILWA on the 2<sup>nd</sup> July 2012.
3. The application is dated 7<sup>th</sup> April 2015 and is brought pursuant to Section 76 of the Law of Succession Act and Rule 3 of the Probate and Administration Rules. She prays that the grant of Letters of Administration made to Violet Nekesa Wasilwa on 2<sup>nd</sup> July 2012 be revoked and/or annulled and a fresh grant be issued to her to enable her facilitate the process of distribution of the estate of the deceased. She also seeks a restraining order against VIOLET NEKESA WASILWA to restrain her from collecting land compensation package due to the estate of the deceased from National Land Commission of Kenya in respect of land parcel No.North Kabras/Kivaywa/1286 pending the determination of this application or in the alternative the said compensation package be deposited into Court pending the determination of the objection.
4. She claims that VIOLET NEKESA WASILWA has failed to diligently administer the estate of the deceased. She also claims that the said Administrator has sidelined other beneficiaries and is using a large part of the deceased's estate for her own benefit. It is also claimed that she has secretly organized to collect the compensation package from the Land Commission of Kenya for her own benefit. Finally, it is alleged that she is not transparent in her administration of the

deceased's estate.

5. Her application is supported by her own affidavit sworn the same date wherein she reiterates the grounds set out on the face of the application. When this matter came up before Judge A.C. MRIMA on 8<sup>th</sup> April 2015 it was ordered that the compensation package due to the estate of the deceased from National Land Commission of Kenya be deposited into Court to await the final decision of the Court in the distribution of the estate of the deceased.

### **Response**

6. The application is opposed by VIOLET NEKESA WASILWA who filed her replying affidavit dated the 12<sup>th</sup> July 2015. She has denied the claims by the Objector/applicant and avers that the applicant and her children are not willing to have the entire estate distributed among all the beneficiaries of the deceased's estate. She further claims that the instant application is only touching on one parcel of land known as N. Kabras/Kivaywa/1286 which is not among the properties of the deceased's estate. She adds that land parcel N. Kabras/Kivaywa/1286 was wrongly captured as N. Kabras/Kivaywa/1330 which forms part of the deceased's estate. She depones further that the applicant does not reside on the above parcel as she was allocated a different parcel of land by the deceased before death and that the deceased sold the above parcel to a number of persons whose names she has given. She claims that both the applicant herein and her son Jackson Masengeli also sold their portions and as such they do not have a share in respect of the said parcel. She is ready and willing to distribute the deceased's estate justly and equitably among all the beneficiaries and to make provision for liabilities.

### **Submissions and Determination**

7. The application was canvassed by way of written submissions which submissions this Court has carefully read through. The main issue for determination is whether the grant issued to Violet Nekesa Wasilwa herein should be revoked and/or annulled on the grounds set out by the objector/applicant.
8. The objector/applicant submits that the Legal Administrator has not applied for confirmation of grant within the stipulated time thereby resulting in inordinate delay and which action contravenes the provisions of Section 76 (d) (ii) of the Law of Succession Act (The Act).
9. The Legal Administrator has not given any reason as to why she failed to file Summons for confirmation of grant. A look at the provisions of Section 76 (d) (i) reveals that a grant of representation may at anytime be revoked if the Court decides either on application by any interested party or of its own motion.

“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) .....

10. The Legal Administrator ought to have filed Summons for confirmation one (1) year after the grant was issued. It is about two years now and no application has been made. Section 73 of the Act however provides that due notice has to be given to the legal Administrator to file for the confirmation of the grant of Letters of Administration. If there is non-compliance after due notice has been given and no good reason is given as to why the Legal Administrator did not apply then a good ground is established to warrant revocation or annulment of grant. The objector/applicant in this case did not give due notice to the Legal Administrator to file for confirmation of grant. Therefore it cannot be argued that Violet Nekesa Wasilwa contravened the provisions of Section 76 (d) (i) (ii) and (iii) of the Act. This Court has also not complied with the provisions of Section 73

of the Act with regard to giving notice to the Legal Administrator to apply for confirmation.

11. This Court therefore finds that the Legal Administrator has not failed to administer the estate of the deceased herein, the objector/applicant having failed to demonstrate how the Legal Administrator contravened the provisions in Section 76 (d) i, ii and iii. The objector/applicant has never given the Legal Administrator any notice to file for confirmation as is required by Law.

### **Conclusion**

12. For the above reasons this Court has reached the conclusion that the objector's/applicant's application is lacking in merit. This Court notes that an earlier grant dated 13<sup>th</sup> December 2007 was revoked wherein the Legal Administrator herein replaced the petitioner. A repeat application, if allowed, will not serve the interests of all the beneficiaries of the deceased's estate.

13. This being a family matter and the administrator being a widow to the deceased, she still remains the best person to administer the estate of the deceased. In doing so, she shall take into account the order made by Hon. Mrima J on 8<sup>th</sup> April 2015.

14. This Court now gives due notice to Violet Nekesa Wasilwa to apply for confirmation of the grant issued on the 2<sup>nd</sup> July 2012 within the next six (6) months, failing which the grant shall stand revoked and a fresh grant shall be issued to the objector/applicant in line with the application herein. Each party shall bear its own costs.

15. Orders accordingly.

**Ruling delivered, dated and signed in open Court at Kakamega this 16<sup>th</sup> day of June 2016.**

**RUTH N. SITATI**

**J U D G E**

In the presence of:

Mr. Shivega (absent) For Objector/Applicant

Mr. Osango (present) For Petitioner/Respondent

Mr. Okoit - Court Assistant