



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 289 OF 2011**

**IN THE MATTER OF THE ESTATE OF STEPHEN NTHIW'A KILULI (DECEASED)**

**SAMMUEL KING'UYU NTHIW'A ..... 1<sup>ST</sup> APPLICANT**

**JACKSON MUTUKU NTHIW'A .....2<sup>ND</sup> APPLICANT**

**RULING OF THE COURT**

1. The application before the Court is Summons for Revocation of Grant filed under **Section 47 and 76** of the **Law of Succession Act and Rule 44(c)** of the **Probate and Administrative Rules**. The Applicant seeks to secure the following orders, namely;

*That the Grant of Letters of Administration made to **Samuel King'uyu Nthiw'a** the Applicant herein and **Jackson Mutuku Nthiw'a** on 24<sup>th</sup> August, 2011 and confirmed on 17<sup>th</sup> July, 2013 be revoked.*

2. The application is premised on the ground that **Jackson Mutuku Nthiw'a** the 2<sup>nd</sup> Administrator herein has failed without reasonable cause and after due notice to proceed diligently with the administration of the estate.

3. The application is supported by the affidavit of the applicant **Samuel King'uyu Nthiw'a** sworn on 2<sup>nd</sup> September, 2015 and his further Affidavit sworn on 14<sup>th</sup> December, 2015.

4. The Applicant's case is that the Respondent is not distributing the estate as per the confirmed Grant dated 17<sup>th</sup> November, 2013, and that the Respondent is defiant of the Grant and has proceeded to divide the land according to his own plan.

5. The application is opposed by the Respondent vide a Replying Affidavit filed in Court on 25<sup>th</sup> November, 2015. The Respondent's case is that since the Confirmation of Grant the Applicant who was in possession of all the titles of the deceased refused to surrender them so that new ones could be issued. The Respondent avers that he has never made any subdivision in contravention to the Confirmed Grant.

6. Parties filed submissions which I have considered. The only issue I raise is whether sufficient grounds have been advanced for the Revocation of Grant.

7. In my view, the Applicant has not shown to this Court how the Respondent is mismanaging the estate, or how he has failed to distribution the estate in accordance with the Grant. The Respondent himself at paragraph 7 of the Replying Affidavit confirms that he is distributing the estate as per the Grant. The Applicant must show what aspect of the Grant have not been distributed as per the grant. The Applicant

has attached annexure 'SKN1' (but referred to in the affidavit as SKN3). That document is not explained, is barely legible and it's not possible to know what it refers to. The estate of the deceased is very large. It is not possible that it can be distributed without any form of disagreement or misunderstanding. However, a misunderstanding cannot be a ground upon which to revoke a Grant. If the beneficiaries have a problem construing certain aspects of the Grant, they can seek help from Court for interpretation. The Applicant should come to Court with specific complaints of breach, so that the Court can look at the alleged breach vis-à-vis the grant. As it is, it is not possible for this Court to know which aspects of the Grant have been breached. If the parties require oral hearing on the construction of the grant, this Court will listen to them. However, there is no ground upon which the Grant herein could be revoked.

8. The application is dismissed with costs to the Respondent.

Orders accordingly.

**DATED, SIGNED AND DELIVERED THIS 26<sup>TH</sup> DAY OF JULY, 2016**

**E.K.O. OGOLA**

**JUDGE**

**In the presence of;**

Mr. Kimeu holding brief for Mulei for Applicant

M/s Mbuvi for Respondent

Court Assistant – Ms. Doreen