



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUSIA**  
**SUCCESSION CAUSE NO. 194 OF 2009**

**IN THE MATTER OF THE ESTATE OF MAN'GOLI SUMBA KWETSOKHO (DECEASED)**

**AND**

**DONARD OPONDO MANG'OLI.....PETITIONER/RESPONDENT**

**VERSUS**

**EVALINE ANYANGO OSINYA.....OBJECTOR/APPLICANT**

**RULING**

1. The dispute herein revolves around the estate of Man'goli Sumba Kwetsokho (the deceased) who died on 10<sup>th</sup> August, 2006. The dispute is between the two houses he left behind; the house of Beledina Mukhwana and that one of Naomi Juma.
2. In a petition presented to this court on 20<sup>th</sup> July, 2009, Donard Opondo Mangoli sought for grant of letters of administration to the estate of the deceased. He named himself as the sole beneficiary to the deceased.
3. On discovering the existence of this cause, the Objector (Evaline Anyango Osinya) filed an objection to the making of the grant on 10<sup>th</sup> October, 2014. In the supporting affidavit, she claims to be a daughter to the deceased and a beneficiary to the estate. She complains that the Petitioner obtained the grant by means of untrue allegations and that there was no consent from the other beneficiaries to the estate of the deceased.
4. This matter partly proceeded by way of *viva voce* evidence and was thereafter adjourned at the instance of the parties who sought time to seek an amicable settlement at home. This was not to be the case.
5. Evaline in her oral evidence testified that she was a daughter to the deceased. She told the court that the deceased had two wives and thirteen children. Further, that the Petitioner herein belongs to the house of the first wife. It was her evidence that all the land left behind by the deceased was taken over by the first house although they have built a house for their mother on that land but she faces a lot of hostility.
6. In cross-examination by the Petitioner, the Objector confirmed that there was indeed hostility between the two widows of the deceased and that is the reason which made her to build a house for her mother.
7. The matter was thereafter adjourned to give the parties an opportunity to settle the matter out of court.
8. When hearing resumed, the Petitioner requested for time to be served with witness statements and

prepare for the objection. The Objector on the other hand opted to appoint an advocate to act for her.

9. On 20<sup>th</sup> September, 2016, the matter was scheduled for hearing of the summons for revocation of grant. Mr. Fwaya, appeared for the Objector. In arguing the summons, he began his submissions by saying that the current grant ought to be revoked and in its place the Objector be appointed as a joint administrator with the Petitioner. The reasons advanced for revocation of the grant is that the Objector and her siblings were left out when the grant was being obtained and no consent was sought from them, neither did her mother who is still alive grant her consent. It was counsel's contention that the Petitioner who responded through a series of affidavits did not dispute the fact that the Objector is one of the beneficiaries to the estate and for that fact attempts had been made to settle the dispute at home. He further added that the Petitioner in one of his affidavits had disclosed that the deceased left behind ten daughters and three sons, a fact that he failed to disclose in his petition.

10. In reply, the Petitioner stated that he had not been served with any documents with regard to the application. He added that the deceased had distributed his property prior to his death and this was done under the existing laws. The Petitioner further submitted that all the beneficiaries had been taken care of and that his sisters were already married. According to him, the sons on the other hand had been shown where to settle and had built on the land. As for his step-mother, he stated that she continues to till the land with no interference whatsoever.

11. The Petitioner's claim that he was not served with the Objector's papers has no merit. He filed replies to the objection confirming that he was indeed served.

12. It is clear from the above submissions that the Petitioner failed to comply with the provisions of Rule 26(1) and (2) of the Probate and Administration Rules which require consent to be obtained beforehand. The provision provides;

**"26.(1) Letters of administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the applicant.**

**(2) An application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall, in default of renunciation, or written consent in Form 38 or 39, by all persons so entitled in equality or priority, be supported by an affidavit of the applicant and such other evidence as the court may require."**

13. That said, Section 76 of the Law of Succession Act, Cap 160 provides for instances when a grant can be revoked by stating that:

**"76. A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by an 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 making of 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 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 unreasonable 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.”**

14. The Petitioner breached paragraphs (b) and (c) of the above cited Section 76. He is guilty of material non-disclosure as to the existence of other beneficiaries and further for not seeking consent of the beneficiaries pursuant to Rule 26(1) and (2) of the Probate and Administration Rules.

15. In light of the above, I make the following orders:

- i) I allow the prayers of the Objector to the extent she will be appointed together with the Petitioner as joint administrators to the estate of the deceased.
- ii) Both administrators shall jointly, within 30 days hereof, apply for confirmation of the grant.
- iii) If any differences on the mode of distribution shall arise, then the parties will be at liberty to present their proposed modes for the court's final determination.
- iv) There shall be no order on costs.

Dated, signed and delivered at Busia this 29<sup>th</sup> day of Sept., 2016

**W. KORIR,**

**JUDGE OF THE HIGH COURT**