



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIVASHA

SUCCESSION CAUSE NO. 49 OF 2014

IN THE MATTER OF THE ESTATE OF MITCHEL CHABEDA ALIAS

PHILLIP CHABEDA ALIAS PHILIP KIDYAVAI CHABEDA (DECEASED)

DENNY NALIAVA CHABEDA.....1ST PETITIONER/RESPONDENT

VIOLET KAZIRA MALANGO.....2ND PETITIONER/RESPONDENT

-VERSUS-

JANE MIDEVA LOMOSI.....APPLICANT/OBJECTOR

R U L I N G

1. On 4th November, 2015 this court issued a grant of Letters of Administration in respect of the estate of the deceased herein, to **Denny Naliava Chabeda** and **Violet Kazira Malongo** of P. O. Box 1707 – 00200 Nairobi.
2. The Summons for revocation was filed on 31st March 2016 by **Jane Lomosi Mideva**, who swears that she is the widow of the deceased and that the grantees herein, though children of the deceased by another woman, obtained the grant herein through fraud and misrepresentation.
3. Attached to the Applicant's affidavit are a copy of a Notice to the grantees among other beneficiaries herein, dated 29th February, 2014 to appear and accept Letters of Administration in respect of the estate of the deceased, and in default, the same be issued in the name of the Applicant herein (**JLM 5a**). The said notice was issued in respect of Nairobi High Court Succession Cause No. 105 of 2014.
4. Also attached are copies of the grant and confirmed grant issued subsequently, in the said succession cause (**JLM 5b and c**). The Applicant depones that the grantees herein secretly filed the present cause with the sole purpose of disinheriting her.
5. Denny Naliava Chabeda the first Petitioner herein swore a Replying affidavit stating that he and the 2nd Petitioner are siblings and children of the deceased and their mother. He has annexed an affidavit by the deceased confirming a customary marriage to the Petitioner's mother one **Rosemary Agoi**, dated 11th March 1974 (**DNC 2**). He denies that the Applicant was a wife to the deceased. He discounts the Applicant's claim in priority or one entitled to give consent to the cause and asserts that all necessary parties gave their consent.

6. Further, that the Chief's letter (**DNC 4a**) which Applicant obtained for purposes of filing the succession cause in Nairobi was countermanded by a subsequent letter by the same Chief (**DNC 4b**). He disputes that the Petitioners in the present cause were cited to accept or refuse the Letters of Administration in the Nairobi Succession Cause.

7. The Applicant swore a Supplementary affidavit wherein she attempts to counter the depositions in the Replying affidavit, particularly with regard to her relationship with the deceased. Several documents are attached to the Supplementary affidavit, including **JLM 5** being an affidavit sworn by **Denny Naliava Chabeda** in Nairobi Succession Cause No. 98 of 2012 in a Petition for grant *ad litem* wherein the deponent identifies the Applicant as his step mother.

8. The parties filed written submissions in respect of the application. The submissions dwell upon the affidavit evidence tendered on either side. Having considered the material canvassed before me I take the following view. There is no dispute that the Petitioners herein are children of the deceased and are well known to the Applicant, who asserts to be the widow of the deceased. Seemingly, there are other children who qualify as beneficiaries.

9. To my mind, the main issue in contention herein is the relationship between the deceased and the Applicant. However, because a grant had been issued in her name and another beneficiary in Nairobi Succession Cause No. 105 of 2014 prior to the impugned grant issued to the Petitioners herein, and the former grant was subsequently confirmed, this court does not consider it prudent to deal with the substantive issue of the Applicant's status vis-à-vis the deceased. It may or may not be that the Petitioners herein, were citees in the Nairobi Succession Cause, or that they were unaware of the Nairobi Succession cause. That too is a matter for determination at the appropriate forum which in my view is the Family Division of the High Court in Nairobi in Succession Cause No. 105 of 2014.

10. This court however cannot allow the parallel subsistence of two grants to different parties in respect of the same estate. For the sake of good order and securing the integrity of the judicial process, I am of the view that the best cause of action is to revoke the grant that was issued in the present cause to the Petitioners. And to further direct that, the Petitioners herein if so inclined, proceed to file a Summons for revocation in Nairobi Succession Cause No. 105 of 2014 so that all the questions raised herein can be determined.

11. The Petitioners herein will not thereby be prejudiced as they are named as beneficiaries in that cause and will have an opportunity to be heard before the very court that issued and confirmed the earlier grant in the name of the Applicant herein, and another beneficiary named as **Rose Karegi**.

12. Accordingly, the grant issued by this court on 4th November 2015 is hereby revoked. Each party will bear own costs.

Delivered and signed on this **21st** day of **November, 2016**.

In the presence of:-

For the Petitioner s : N/A

For the Objector : Miss Muigai

Court Clerk : Barasa

C. MEOLI

JUDGE