



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT KAKAMEGA**

**SUCCESSION CAUSE NO. 339 OF 2009**

**IN THE MATTER OF:           THE ESTATE OF J S S(Deceased)**

**M B .....APPLICANT**

**VERSUS**

**M K .....RESPONDENT**

**RULING**

The application dated 5th November, 2012 seeks to have the grant issued on 10th August, 2009 revoked. It is supported by the Applicant's affidavit sworn on the same date. The Petitioner filed a replying affidavit sworn on 22nd October, 2013. parties relied on their respective pleadings.

The main issue raised by the Applicant is that she is the deceased's widow and was not included in the petition for Letters of Administration. The Petitioner is the daughter of the first wife. The Applicant had one child with the deceased and they adopted a second child. The two children were not included. The Petitioner has transferred the only plot left by the deceased to her name.

The Petitioner contends that the family agreed with the buyers that she files the succession cause. The Petitioner was not willing to participate. The petitioner lives on the land.

Given the fact that the Applicant is the deceased's widow and that other children of the deceased were not included, I do find that there was concealment of material facts in the process of obtaining the grant. There is a child aged 14 years and its not clear how the grant was issued to one person contrary to the law relating to such situations whereby at least two administrators must be appointed. The fact that the Applicant lives on the plot or that she was not willing to participate does not give the Petitioner the leeway to exclude her. There is no copy of the confirmed certificate in the court file. There is a certificate of urgency dated 26th April, 2010 indicating that the beneficiary wanted to travel abroad. The application for confirmation of the grant dated 25th February, 2010 lists Z S S as the widow. According to the Applicant, Z is the Petitioner's mother who divorced the deceased. Further, the Petitioner has a brother and a sister from her own mother and they were not mentioned in the Petition.

I do find that the Petitioner's action to exclude the Applicant is not only unlawful but also criminal. The transfer of plot number KAKAMEGA/BULUKHOPA/ *[particulars withheld]* to the Petitioner was irregular. I do find that the application dated 5th November, 2012 for the revocation of the grant is merited and the same is hereby allowed. The transfer of the above plot to the Petitioner is hereby revoked and the land shall revert to the deceased. A fresh grant shall be issued to the Applicant herein who shall make an application for its confirmation. Costs of this application to the Applicant.

Dated and signed this **25th** day of **February, 2015**

**Said J. Chitembwe**

**JUDGE**

Delivered and countersigned on this **25<sup>th</sup>** day of **February** 2015

**Ruth Sitati**

**JUDGE**