



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 582 OF 2011

IN THE MATTER OF THE ESTATE OF MBONDO KATA (DECEASED)

1. SERAH MUNYIVA KIVINDU

2. GRACE MUNANIE MBONDO PETITIONERS/RESPONDENTS

VERSUS

1. DANIEL MUSAU MBONDO

2. JOSEPH KIVINDU MBONDO

3. WILSON ITUMO MBONDO

4. MUTISYA MBONDO

5. DAVID M. MBONDO

6. MBATHA MBONDO

7. SYONDIA MBONDO

8. MUMBUA MBONDO.....OBJECTORS/APPLICANTS

RULING

1. The application dated 26/11/2013 seeks orders that the Grant issued herein on 26/10/2011 be revoked and or annulled.
2. According to the Affidavit in support, the Grant was issued to the 1st Respondent, **Serah Munyiva Kivindu** and 2nd Respondent **Grace Munanie Mbondo** through defective proceedings. It is averred that the Grant was obtained fraudulently by the making of false statements or by concealment of material facts to the court. The Applicant accused the 1st Respondent who is a wife to their brother of taking advantage of their mother the 2nd Respondent who is elderly. It is the Applicant's contention that their consent was not obtained prior to the obtaining of the Grant.
3. In opposition to the application, the 1st Respondent filed a replying affidavit. According to the 1st Respondent, the deceased had two houses. That the widow, **Mary Mwendu Mbondo** had five daughters but no sons and with the consent of the deceased married her under **Kamba Customary Law** and she bore her 11 children. That the other widow, **Grace Munanie Mbondo** (2nd Respondent) and her children who are the Objectors herein are aware of the said position.
4. During the hearing of the application, the parties relied on their affidavits which I have duly

considered.

5. It is noted that a consent to the making of a Grant was filed herein on 14/7/2011. The said consent reflects that it was signed by twenty beneficiaries, among them the Applicants herein. The Applicants have not been referred to in the said consent yet they had stated that their consent was not obtained.
6. Be as it may, it seems the Applicants are aggrieved by the fact that the 1st Respondent is an Administrator to the estate of the deceased. It is also noted that the Applicants are apprehensive that the 1st Respondent may take advantage of their elderly mother who is the 2nd Respondent. These fears can be taken care of by the appointment of one of the Applicants as the third Administrator in the estate of the deceased. This will cater for the interests of all the parties, including the interests of the 1st Respondent whose position is that she is also a beneficiary in the estate of the deceased.
7. With the foregoing, the 1st Applicant is to remain as an Administrator herein. The 2nd Respondent is at liberty to either remain as a 2nd Administrator or to relinquish her position to one of her children. The Applicants are also at liberty to propose one of them to be the 3rd Administrator. The house of the 2nd Administrator to deliberate on the matter and inform the court of their decision on the next mention date. Orders accordingly.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 19th day of February 2015.

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B. THURANIRA JADEN

JUDGE