



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 1028 OF 2009

IN THE MATTER OF THE ESTATE OF PHILIP MBUVI MUTUA (DECEASED)

PRISCILLAH KAKII MBUVI.....APPLICANT

VERSUS

PETER MUTHUSI MBUVI

FRANCIS KIMEU MBUVI.....RESPONDENTS

RULING

1. **Phillip Mbuvi Mutua** (deceased) died domiciled in Kenya at **Ngiluni–Makueni** on the 25th October, 1998. Letters of Administration intestate in respect of his estate were issued to **Peter Muthusi Mbuvi** and **Francis Kimeu Mbuvi** on the 13th October, 2010. A certificate of confirmation of the grant was issued on the 28th September, **2012** whereby the Estate was distributed.
2. On the 25th October, 2013 **Priscillah Kakii Mbuvi** (applicant) filed summons seeking revocation and/or annulment of the confirmed grant on the ground that it was obtained fraudulently by making of a false statement and by concealment of material fact from the court. She also sought leave to file an affidavit to the proposed distribution for the court’s consideration.
3. In support of the application, the applicant deponed an affidavit stating that she is a widow to the deceased and was not involved in the application for confirmation of the grant as the same was done secretly without her knowledge. She denied an allegation that the deceased distributed his estate prior to his demise.
4. Further, she stated that her household was dissatisfied with the distribution which was not equitable and some 0.46 hectares was un-accounted for.
5. The 1st administrator filed a replying affidavit stating that the summons for revocation of grant was incompetent, bad in law and without merit. All names of beneficiaries were included in the petition; the applicant was aware of the succession proceedings. The applicant’s family has been uncooperative; the deceased shared out his properties prior to his demise amongst the three (3) houses. Administration of the estate has been completed. The distribution of the estate was equitable; and revoking the grant will be a waste of valuable judicial time.
6. The application was canvassed by way of written submissions that I have considered.
7. The application is brought pursuant to the provisions of **Section 76(b) and (c)** of the **Succession Act** that provides thus:-
 - a. ...
 - b. *That the grant was obtained fraudulently by the making of a 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 that the allegation was made in ignorance or inadvertently”*

8. The issue to be considered is whether the proceedings were defective as a result of the grant having been obtained fraudulently. It is not in dispute that the applicant’s house was included as the beneficiaries of the Estate of the deceased. The contention is that she was not involved in the confirmation of the grant which resulted into an unequitable distribution of the estate.
9. Summons of confirmation of grant filed were supported by an affidavit sworn by **Peter Muthusi Mbuvi**. No consent to the confirmation of grant was filed to indicate if indeed the applicant or any other beneficiary of the estate was in agreement with the proposed distribution. It is averred that the unequitable distribution was done by the deceased himself. Even if that was the case, the intended confirmation of the grant should have been brought to the attention of the applicant. She should have consented to it. The fact that the applicant a widow to the deceased had not consented to the proposed distribution was concealed from the court. This was a material fact.
10. Consequently, I do revoke the grant issued herein. The applicant is granted leave to file an affidavit of protest to the confirmation of the grant within 24 days. Thereafter directions may be taken in the matter.
11. Costs of the application shall be in the cause.

DATED, SIGNED and DELIVERED at MACHAKOS this 18TH day of MARCH, 2015.

L.N. MUTENDE

JUDGE