



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**SUCCESSION CAUSE NO. 116 OF 2012**

**IN THE MATTER OF THE ESTATE OF GILBERT GHONAR NGAMBA (DECEASED)**

**MWAMUYE NYAMAWI.....CAVEATOR**

**RULING**

By way of a Notice of Motion dated 13<sup>th</sup> June, 2013 the caveator herein **MWAMUYE NYAMAWI** has sought *inter alia* the following orders:

**“3. THAT this Honourable court be pleased to review and set aside the order and proceedings made on the 9<sup>th</sup> day of May, 2013 and the subsequent certificate of confirmation of the Grant dated 4<sup>th</sup> day of June, 2013 and do order that the caveat dated 12<sup>th</sup> April, 2013 and the summons for confirmation of the Grant dated the 22<sup>nd</sup> day of March, 2013 be heard and determined inter-partes.**

**4. THAT alternatively, this court be pleased to revoke and/or annul the said Grant confirmed on the 9<sup>th</sup> day of May, 2013.**

**5. THAT the Administrators be condemned to costs of this application.”**

The application was supported by the affidavit of the caveator dated 13<sup>th</sup> June, 2013. The application arises from a claim which the caveator had against the deceased **GILBERT GHONAR NGOMBA** during his (the deceased's) lifetime. The claim arose from a judgment issued in favour of the caveator against the deceased in respect of a road traffic accident vide **Mombasa Civil Suit No. 398 of 2004**. After a full hearing the trial court awarded damages to the tune of Kshs. 909,800/= plus costs and interest in favour of the caveator all of which translated to Kshs. 1,242,947/=. Prior to his death the deceased had been liquidating this judgment amount and had already paid a total of Kshs. 520,000/= by the time of his death on 20<sup>th</sup> December, 2011. This left a balance due to the caveator of Kshs. 769,840/= which sum he seeks to obtain from the estate of the deceased. To protect his interest and claim the caveator did on 12<sup>th</sup> April, 2013 file in this Succession Cause a caveat also dated 12<sup>th</sup> April, 2013.

After the death of the deceased **FAITH MWAKA MWANGOVYA** and **BRIAN MWAKUNDE GHONAR** (hereinafter referred to jointly as '*the administrators*') applied for and obtained letters of administration in respect of the estate of the deceased. A Grant of letters of administration was issued on 19<sup>th</sup> September, 2012. On 24<sup>th</sup> March, 2013 the administrators filed a summons for confirmation of Grant dated 22<sup>nd</sup> March, 2013. On 9<sup>th</sup> May, 2013 the summons was approved and on 4<sup>th</sup> June, 2013 a confirmed Grant was issued to the two administrators. The caveator thereafter filed this application.

I have carefully perused the written submissions filed by both parties. The caveator did in compliance with the law file a caveat on 12<sup>th</sup> April, 2012. As such he ought to have been notified by the registry before any further action on probate was taken. This was not done. There is no evidence that the caveator was notified of the summons for confirmation of Grant or the date the same was listed for hearing yet a clear address for service had been provided. This was an error on the part of the court registry. The issue of the caveat was not noticed at the time of confirmation of the Grant. The caveator had a right to be heard in line with Rule 15 (8) of the Law of Succession Rules. I find that the Grant

ought not to have been confirmed before the caveator had been granted a hearing. I therefore allow prayer (4) of this application. I hereby revoke the Grant confirmed on 9<sup>th</sup> May, 2013. I further direct that the summons for confirmation of Grant be heard and determined afresh. Each party to meet their own costs.

**Dated and delivered in Mombasa this 21<sup>st</sup> day of February, 2014.**

**M. ODERO**

**JUDGE**

In the presence of:

Mr. Sichale for Applicant

Ms. Kayata h/b for Respondent

Court Clerk Mutisya