



No. 213/2014

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 229 OF 1993

IN THE MATTER OF THE ESTATE OF NDUNDA KALWE (DECEASED)

MUTHEU NDUNDA KALWE.....1ST PETITIONER/RESPONDENT

MUTUA NDUNDA.....2ND PETITIONER/RESPONDENT

VERSUS

SCHOLA NTHENYA NDUNDA.....1ST OBJECTOR/APPLICANT

JAMES MUTUKU NDUNDA.....2ND OBJECTOR/APPLICANT

JOSEPHINE NDETE MUTUA.....3RD OBJECTOR/APPLICANT

RULING

1. The application dated 3rd June, 2011 is brought pursuant to the provisions of **Section 76(a) (b) (c) (d) (ii)** of the **Law of Succession Act** and **Rule 44(1)** of **Probate and Administration Rules**. The order sought is annulment of grant of letters of administration issued on 20th January, 2008 to **Mutheu Ndunda Kalwe** and **Mutua Ndunda** in respect of the estate of **Ndunda Kalwe**.
2. It is stated by the applicants/ objectors that the grant was obtained fraudulently. Material facts were concealed from the court as the applicants failed to disclose all the beneficiaries of the estate of the deceased. This rendered the proceedings defective.
3. The application is supported by an affidavit deponed by **James Mutuku Ndunda** the 2nd objector/applicant having been authorised by his co-objectors. He stated that his late mother **Ndumi Ndunda**, a daughter to the deceased was unmarried hence buried on plot **No. Iveti/Mungala/404**. The deceased had two (2) wives **Muendi Ndunda** and **Mutheu Ndunda**. The co-objectors mothers who were also daughters to the deceased died and were buried on the said land. The petitioners only listed beneficiaries from the 2nd house but excluded beneficiaries from the 1st house.
4. The petitioners did not file any replying affidavit to the application. Both parties however filed submissions.
5. In her submissions, **Anne Thoronjo advocate** for he objectors stated that the petitioners made false statements by failing to disclose the objectors as beneficiaries to the estate. She called upon the court to nullify the grant on grounds that the petitioners failed to recognise other dependants of the estate of deceased.
6. In their submissions, **Mutua Ndunda** the 2nd petitioner admitting that indeed the deceased had

- two (2) wives argued that at the time of institution of the succession cause one of them was dead. He argued that the application should fail since the applicants who are dependants of the deceased were notified of the impending cause but were not cooperative. Further he stated that the 1st and 3rd objectors having been married elsewhere they had shares there.
7. It is not in dispute that the deceased had two (2) wives. Disclosure of all people surviving the deceased is a requirement in a succession cause. A perusal of **Form P&A 5** (affidavit in support of the Petition for letters of administration intestate) only one wife and six (6) children are listed as surviving the deceased. There was material non-disclosure of the other wife and her children. It has been contended by the objectors/applicants that their deceased mothers, daughters to the deceased herein were buried on parcel No. **Iveti/Mungala/404**. The said asset is listed as one of the deceased's assets.
 8. Looking at the certificate of confirmation of the grant, that asset is omitted. This is proof that some assets of the deceased were left out. It has been alleged that the objectors/applicants were notified of the impending succession cause. However no evidence of such notice was adduced. Their consent prior to obtaining the grant was imperative.
 9. It is trite law that where a grant is obtained fraudulently by making a false statement or concealment of material information the same may be revoked or annulled (*see Section 76 of the Law of Succession Act*).
 10. It is apparent that the petitioners/respondents concealed the fact that the deceased had two (2) wives who had children. They concealed the fact that the applicants herein were beneficiaries to the estate of the deceased. This calls for annulment of the grant.
 11. It is therefore ordered that the grant issued herein be and is hereby annulled. This being a succession matter each party shall bear their own costs.

DATED, SIGNED and DELIVERED at MACHAKOS this 3RD day of APRIL, 2014

L.N. MUTENDE

JUDGE