



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**SUCCESSION CAUSE NO. 36 OF 2010**

IN THE MATTER OF THE ESTATE OF **TIMONA KILONZO KATHUKYA (DECEASED)**

**RAPHAEL NZIOKA KILONZO .....PETITIONER**

**VERSUS**

**ANASTACIA NGINA KILONZO .....OBJECTOR**

**RULING**

1. By an application dated **21<sup>st</sup> May 2013**, the applicant/objector seeks this court's order annulling and/or revoking letters of administration intestate issued to the Petitioner in respect of the Estate of **Timona Kilonzo Kathukya (deceased)**. The application is premised on grounds that the grant was obtained fraudulently by failure to disclose all the beneficiaries of the deceased; by making of false statements and concealment of material facts; and the proceedings were defective.
2. In an affidavit in support of the application it was averred that dependants of the deceased were excluded from the list of persons who survived him; the succession cause was filed without their knowledge. He concealed this fact from the court making it to believe that he was an only child.
3. In his reply the Petitioner/Respondent admitted that indeed the applicant is his sister. He stated that when he filed the petition, notice was published in the Kenya Gazette and no objections were raised. He stated that the deceased distributed his estate prior to his demise.
4. In response the objector stated that she only came to learn of the Succession Cause when the Petitioner started disposing off the deceased's estate.
5. In considering the application this court must revert to the Provision of **Section 76 (a), (b), (c), (d) (ii)** of the Law of Succession Act which stipulate thus:

***“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or its own motion-***

- a. ***The proceedings to obtain the grant were defective in substance;***
- 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;***
- d. ***that the person to whom the grant was made has failed, after due notice and without reasonable cause either;***

ii. ***To proceed diligently with the administration of the estate.***”

According to the law any petitioner applying for grant is required to state names of all surviving spouses, children, parents, brothers and sisters of the deceased (***See Section 51(1) (g)*** of the Law of Succession Act).

6. This is a case where the Petitioner herein in his affidavit in support of the petition for letters of administration intestate deponed that he was the only son and hence survivor to the deceased. In his affidavit in support of the application for confirmation of the grant, he also deponed that he was the only surviving beneficiary to the deceased. He concealed the fact that he had siblings. His five (5) sisters also survived the deceased. They were equally entitled to inherit the properties left by the deceased.
7. The question to be posed is whether the application should fail by virtue of technicalities alluded to by the Petitioner as stated in the submissions filed. The court has the discretion of revoking or annulling a grant where it finds reason to do so as stipulated by the provisions of **Section 76** of the **Law of Succession Act** even on its own motion. Therefore such an application having merit would not be dismissed on mere technicalities.
8. Having considered all issues raised it is apparent that the grant herein was obtained following concealment of material facts. This was fraudulent. In the premises I do revoke the confirmed grant issued to the Petitioner herein. I do direct that another Grant shall issue to **Raphael Nzioka Kilonzo**, (Petitioner), **Anastacia Ngina Kilonzo** and **Anne Koki Kilonzo** who should apply for confirmation of the grant.
9. The applicant shall have costs of the application in any event.

**DATED, SIGNED and DELIVERED at MACHAKOS this 21<sup>ST</sup> day of MAY 2014.**

**L.N. MUTENDE**

**JUDGE**