



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT HOMA BAY**  
**SUCCESSION CAUSE NO. 82 OF 2013**  
**IN THE MATTER OF THE ESTATE OF**  
**RAPHAEL NYABUCHE OBUNGA (DECEASED)**

**BETWEEN**

**MARGARET AKWA NYABUCHE ..... APPLICANT**

**AND**

**GEORGE OTUMBA NYABUCHE ..... RESPONDENT**

**RULING**

1. Upon application by George Otumba Nyabuche in Homabay *Chief Magistrates Court Succession Cause No. 236 of 2014*, the court issued a grant of letters of administration in respect of the estate of Raphael Nyabuche Obunga alias Nyabuche Obunga on 9<sup>th</sup> January 2012. The same was confirmed on 27<sup>th</sup> September 2012.
2. Margaret Akwa Nyabuche filed the summons for revocation of grant dated 16<sup>th</sup> September 2013 seeking revocation of the grant on the ground that the grant issued was defective in that the petitioners failed to disclose the existence of the applicant and other remembers of the deceased's family.
3. At the hearing of the summons it became clear that the deceased's wives and children had not been disclosed in the application. From the depositions filed by the petitioner and respondent following uncontested facts emerged. The deceased, Raphael Nyabuche Obunga had three wives, Margaret Ocholla Nyabuche, Rusalina Owaga Nyabuche and Margaret Akwa Nyabuche. Only Margaret Akwa Nyabuche, the applicant is alive.
4. The first wife had three sons; Oyugi Nyabuche, Damian Ologi Nyabuche and Paul Yambo Nyabuche. The 2<sup>nd</sup> wife had four sons; John Ayoti Nyabuche, Charles Matuga Nyabuche, Maurice Ologi Nyabuche and the applicant, George Otumba Nyabuche. The 3<sup>rd</sup> wife has three sons; Charles Wanda, Joseph Marembo Nyabuche, Joseph Ogolla Nyabuche.
5. It is clear therefore that the petition filed in the succession cause did not disclose the existence of the three wives and their children as required by the mandatory provisions of **section 51** of the *Law of Succession Act (Chapter 160 of the Laws of Kenya)*. In terms of **section 76(b)** of the *Act*, the failure to make such a disclosure is a material concealment that entitles the court to revoke the grant either on application of a party or on its own motion.

6. Upon consideration of the parties' deposition it is clear that the dispute revolves around whether the deceased settled his property to some of his beneficiaries prior to his death. This is a fact that is taken into account in distribution but does not relieve the petitioner from making full disclosure of all the beneficiaries and their interests when filing the petition for grant of letters of administration.
7. In the circumstances, I make the following orders:
  - a. The grant of letters of administration issued to **GEORGE OTUMBA NYABUCHE** on 9<sup>th</sup> January 2012 and confirmed on 27<sup>th</sup> September 2012 in *Homa Bay Chief Magistrates Court Succession Cause No. 236 of 2012* be and is hereby revoked.
  - b. A grant of letters of administration for the estate of **RAPHAEL NYABUCHE OBUNGA** (deceased) is hereby issued to **George Otumba Nyabuche & margareT Akwa nyabuche**.
  - c. The administrators or any of them shall apply for confirmation of the grant within fourteen (14) days from the date hereof
  - d. Each party shall bear their own costs.

**DATED** and **DELIVERED** at Homa Bay this 25<sup>th</sup> day of June 2014.

**D. S. MAJANJA**

**JUDGE**

Mr G. S. Okoth instructed by G. S. Okoth and Company Advocates for the applicant.

Mr Sagwe instructed by S. M. Sagwe and Company Advocates for the respondent/petitioner.