



No.322/2014

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 875 OF 2012

IN THE MATTER OF THE ESTATE OF **DAVID MWAU NDOLO (DECEASED)**

JOSEPH N. M. NDOLOAPPLICANT/OBJECTOR

VERSUS

TERESIA KINDILE MWAU.....1ST RESPONDENT

VERONICA MBULWA MWAU.....2ND RESPONDENT

BERNARD KATUMO MWAU3RD RESPONDENT

RULING

1. The application dated **20th February, 2014** is brought pursuant to the provisions of **Section 76** of the **Law of Succession Act**. It seeks orders that :-
 - i. Letters of Administration Intestate granted to the 1st and 2nd respondents be revoked and/or annulled.
 - ii. A grant of Letters of Administration be made to **Joseph N.M. Ndolo** as a joint administrator with **Teresia Kindile Mwau** and **Veronica Mbulwa Mwau**
 - iii. The Administrator be compelled to give accounts of the Estate for a period they have been administrators.
2. The application is premised on grounds that the applicants signature and that of **Hellen Mukui Mwau**, beneficiaries to the estate of the deceased(estate) were forged; the succession process was done in secrecy without the knowledge of the applicant who is a resident in Alabama in the United States of America ; the children of the late **Mary Nthule Mwau** were not included as beneficiaries to the estate; the 3rd respondent is collecting rent from the estate for his personal benefits and wasting the estate; two of the administratix are advanced in age and are being duped by one of the beneficiaries, **Bernard Katumo Mwau** into wasting the estate.
3. The application is supported by an affidavit deponed by the applicant, who describes himself as a beneficiary of the Estate being a son to the 1st respondent and a step-son to the 2nd respondent. He avers inter-alia that the 3rd respondent has attempted to dispose off an asset belonging to the Estate of the deceased namely **Eastleigh L.R 36/11/33**; due to the trickery of the 3rd respondent beneficiaries of the Estate of the deceased have dropped out of school yet the estate fetches over 200,000/= per month

4. The application was not opposed.
5. According to **Section 76** of the **Law of Succession Act**, a grant of representation may be revoked / annulled if it was obtained by making of false statement or by means of untrue allegation of a fact essential in point of law to justify the grant.
6. **Rule 26(1)** of the **Probate and Administration Rules** provides that:-

“Letters of Administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the applicant”.

7. The applicant herein being a son to the deceased was entitled to apply for the Grant of Letters of Administration just like the respondents. It was therefore a requirement for him to be notified of their intention to apply for Letters of Administration. A Consent to the making of the grant of letters of administration intestate to a person of equal or lesser priority was filed purported to have been signed by beneficiaries to the estate. It has been stated and not controverted that a signature appearing thereon as belonging to the applicant is a forgery. It is further alleged that the one for **Hellen Mukui** is also forged. This means that the grant was obtained following untrue allegations of facts. Such petitioners cannot be trusted to administer the estate of the deceased.
8. In the premises the applicant has demonstrated the need to annul the grant issued.
9. Consequently, I order as hereunder:-
 - i. The Grant of Letters of Administration Intestate issued herein and confirmed on the **14th** day of **January, 2014** be and is hereby revoked.
 - ii. The respondents shall be required to give accounts of the Estate of the deceased for the duration they were administrators.
 - iii. Beneficiaries of the estate of the deceased shall pursue issuance of fresh Letters of Administration of the Estate.
 - iv. Costs of the application shall be borne by the respondents.

DATED, SIGNED and DELIVERED at MACHAKOS this 24TH day of JUNE 2014.

L.N. MUTENDE

JUDGE