



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KAKAMEGA**  
**SUCCESSION CAUSE NO. 74 OF 2008**

**IN THE MATTER OF THE ESTATE OF THE LATE MAKANGA MANYASI – DECEASED**

**BEATRICE PENINA ANUPI ..... APPLICANT**

**VERSUS**

**PHILIP MANYASI KOTIA ..... RESPONDENT**

**RULING**

The **Summons** for annulment of grant dated 11/3/2008 seeks the following orders:-

1. **The Honourable Court be pleased to revoke the grant of letters of administration intestate issued to PHILLIP MANYASI KOTIA on the 19<sup>th</sup> September 2005, on the grounds that the grant was obtained fraudulently by making a false statement and/or by concealment from the court of something material to the case.**
2. **An order do issue for the rectification of the register with respect to title No. W/BUNYORE/EBUSAKAMI/1254 so as to cancel the name of PHILIP MANYASI KOTIA.**

The applicant, **Beatrice Penina Anupi** in her affidavit in support of the summons described her late father as a brother to the deceased herein. The deceased was not survived by any children or wife.

According to the applicant, the respondent, **Philip Manyasi Kotia** who is a step brother to the deceased obtained a grant of letters of administration to the estate of the deceased fraudulently. The applicant alleges as follows against the respondent:-

- The respondent described himself as a son to the deceased when he was a step brother to the deceased.
- The respondent failed to disclose that one beneficiary by the name **Harrison Eyule** was a minor and that the deceased also had other nieces and nephews who survived him. The respondent falsely reflected one **Kennedy Okoko Osiako** as a child of the deceased.
- The respondent did not obtain the consent of the applicant and her mother who ranked higher in priority.

It was further averred that after obtaining the grant, the respondent transferred land piece No. **W/Bunyore/Ebusakami/1254** to his name.

The applicant filed a further affidavit and a supplementary affidavit which gives mere background information and details relating to the entire estate of the deceased. However, only the aforesaid property is the subject of the application at hand.

In opposition to the application, the respondent filed a replying affidavit sworn on 11/12/2008. In the said affidavit the respondent describes himself as a brother to the deceased. According to the Respondent, he is entitled to an equal share of the estate of the deceased. The respondent's stand is that the applicant was aware of the making of the grant of letters of administration herein.

According to the applicant, it was the applicant's father who sold land parcels **No. W/Bunyore/1677** and the respondent and land parcel **No. W/Bunyore/1274** which were all properties left behind by the deceased herein. The respondent had no problem with transferring half of land parcel **No. West/Bunyore/1254** to the applicant.

The respondent accused the applicant of selling land parcel **No. West/Bunyore/1274** to one **Mary Ayule** when it had already been sold to one **Harrison Osiako** the father to **Kennedy Osiako Okoko**.

The respondent has in his affidavit conceded that he is a brother to the deceased and not a son. In the petition for letters of administration, the respondent described himself as a son to the deceased. The respondent also described one **Harrison Osiako** and one **Harrison E. Tole** as some of the survivors left behind by the deceased. That could not be the correct position as the respondent has stated in his replying affidavit that **Harrison Osiako** is a purchaser. The respondent also failed to disclose the applicant and her mother as some of the beneficiaries. No consent was obtained from the applicant when the court was petitioned for the grant.

The respondent gave the estimate value of the estate of the deceased as Kshs.150,000/=. This was beyond the jurisdiction of the Vihiga SPM's Court as provided for under **section 48** of the **Law of Succession Act**.

The application has merit and is allowed. A new grant to issue in the joint names of the applicant and the respondent. Costs of the application to the applicant.

**B. THURANIRA JADEN**

**JUDGE**

Dated and delivered at Kakamega this 27<sup>th</sup> day of **June** 2013.

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**SAID J. CHITEMBWE**

**JUDGE**