



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 149 OF 2008

IN THE MATTER OF THE ESTATE OF NZYOKA MWANIKI (DECEASED)

TABITHA KAMENE NZIOKA APPLICANT

VERSUS

DANIEL MUTUA NZIOKA RESPONDENT

RULING

The **Summons** for revocation or annulment of grant dated 2/5/2012 is brought under **section 76 of the Laws of Succession Act** and **Rule 44 (1) of the Probate and Administration Rules**.

The application is based on the grounds that:-

- a. **The grant was obtained fraudulently by making of a false statement or by the concealment from the court of something material to the case.**
- b. **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.**
- c. **That the proceedings to obtain the grant were defective in substance.**

The background facts as set out in the affidavit in support sworn by the Applicant on 2/5/2012 is that the grant of letters of administration issued to the complainant were confirmed on 23/2/2009. It is contended that the Respondent omitted the names of his siblings when he indicated in the petition that he was the only beneficiary. The Applicant has averred that consent of the other beneficiaries was not obtained prior to the filing of the petition.

The application is unopposed. No papers were filed in opposition to the application. The facts set out in the Applicant’s supporting affidavit therefore remain uncontroverted. Consequently, the application is allowed with costs to the Applicant.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 4th day of July 2013.

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B. THURANIRA JADEN

JUDGE