



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
MISC. CIVIL APPLICATION NO. 27 OF 2006
IN THE MATTER OF THE ESTATE OF JAMES AMOMBO ANGOKKHO – DECEASED

AND

IN THE MATTER OF VIHIGA RESIDENT MAGISTRATE’S COURT

SUCCESSION CAUSE NO. 72/2001

BETWEEN

JOSIAH KABOLE ANGOKHO..... APPLICANT

VERSUS

FRANCIS PANDI JAMES..... 1ST RESPONDENT/ (DECEASED)

WILLY HENRY ASHIUNDU 2ND RESPONDENT

R U L I N G

The Application dated 27.2.06 seeks orders that the grant of letters of administration issued to the Respondents by the Senior Resident Magistrate’s court, Vihiga on 25.10.01 be revoked or annulled. The application is supported by the affidavit of JOSIAH KABOLE, the applicant.

The application is opposed to as per the replying affidavit of the 2nd Respondent, WILLY HENRY ASHIUNDU.

Mr. Amendi advocate appeared for the applicant and Mr. Ombaye advocate appeared for the Respondent.

I have considered the application, the reply to the same and the submissions of the counsels.

Although the application was opposed to, during the submissions it was conceded by the Respondents counsel that the name of the applicant was omitted from the list of beneficiaries. This was attributed to a typing error.

A perusal of the record reveals that the name of the applicant was indeed left out of the list of beneficiaries. It is also noted that there was no letter of consent from the applicant giving consent to the Respondents to obtain the grant.

It is clear that the grant was obtained by concealment of material facts.

Mr. Ombaye has raised issues regarding the applicant's lack of compliance with rule 44 (1) of the Probate & Administration rules. I however agree with Mr. Amendi advocate that technicalities of procedure cannot derail the course of justice. The applicants name ought to have been indicated as one of the beneficiaries.

On the basis of the foregoing, the grant issued to the petitioner and confirmed on 25.10.01 is hereby revoked.

Having revoked the grant herein, I would have gone further ahead to have the name of the applicant included in a fresh grant but I have also noted that there is a pending application for substitution of the 1st Respondent, FRANCIS PANDI JAMES who has since passed on.

The application dated 20.9.07 for substitution ought to be prosecuted first before fresh grant is issued. The applicant's names should ultimately be included in the new Grant.

Delivered, dated and signed at Kakamega this 16th day of February, 2012

B. THURANIRA JADEN
J U D G E