

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NO.425 OF 2009

**IN THE MATTER OF THE ESTATE OF GRACE MBITHI MULI Alias KAVENI MUTIO
YOMBIA (DECEASED)**

**GABRIEL MAILU MUTIO.....
.....CITOR**

RULING

This is an application for revocation of a grant issued to the petitioner on 18th January, 2010 in respect of the estate of Grace Mbithi Muli, the deceased.

The applicants have averred that the grant was obtained fraudulently by making of false statement or by the concealment from the court of some material facts; that the petitioner is hostile, repulsive and shall not administer the estate in accordance with the wishes of the applicants; that the grant shall become useless and inoperative due to open bias and dishonesty of the petitioner and that the petitioner has no capacity or capability to diligently administer the estate.

The petitioner has for his part denied the above allegations and maintained that the applicants have been intermeddling with the estate by purporting to distribute it without a grant of representation; that the applicants refused to cooperate with the petitioner to petition for the grant hence the citation; that the applicants are precluded from seeking to be appointed administrators due to their conduct.

Counsel agreed to file written submissions. Only submissions by counsel for the applicants were filed.

I have considered all the material before me and hold the following view of the matter. The deceased was survived by three sons, (the petitioner and the two applicants) and five daughters. The petitioner filed Citation No.8 of 2008 in which he sought to have all his siblings to indicate if they would accept or refused letters of administration.

The applicants were served with the citation on 18th February, 2009 and on 23rd February, 2009 within the stipulated period. The applicants, through counsel entered appearance. There is no record that the citation and the applicants' entry of appearance were placed before the judge for directions. The petitioner proceeded to obtain the grant even before the citation was heard. In terms of **Rule 22 of the Probate and Administration Rules**, the applicants having entered appearance, it was improper for the petitioner to go ahead and obtain a grant without the applicants being heard.

For that reason, I come to the conclusion that the proceedings to obtain the grant were defective in substance; and that the petitioner concealed from the court the fact that the applicants had entered appearance in Citation No.8 of 2008.

The grant issued to the petitioner on 18th January, 2010 is hereby revoked.

Costs in the cause.

Dated, Delivered and Signed at Nakuru this 16th day of February, 2011.

W. OUKO

JUDGE