



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**SUCCESSION CAUSE NO. 42 OF 2003**

**IN THE MATTER OF THE ESTATE OF SOFIA HASSAN BWANAMKUU – DECEASED**  
**OMAR LALI OMAR.....APPLICANT**

**VERSUS**

**1. BWANAMKUU MOHAMMED OMAR**  
**2. MWANASOMO ASUO MWENYE.....RESPONDENTS**

**R U L I N G**

1. Omar Lali Omar, hereinafter referred to as the Applicant seeks orders *inter alia*:

§ That the grant of letters of administration issued to Mohamed Omar and Mwanasomo Asuo Mwenye on 1<sup>st</sup> September, 2003 and confirmed on the 27<sup>th</sup> August, 2004 be annulled.

§ That letters of administration in respect of the estate of the deceased Sofia Hassan Bwanamkuu be issued to Omar Lali Omar, Bwanamkuu Mohamed Omar and Mwanasomo Asuo Mwenye.

§ That the transfer of portion number 22 Manda Island (Ras Kitua) to Hellen Feiler be cancelled and the title of the land revert back to the estate of Sofia Hassan Bwanamkuu.

2. The grant which is sought to be revoked was issued on the basis of a petition purported to have been brought by Bwanamkuu Mohamed Omar and Mwanasomo Suo Mwenye, who are son and daughter to the deceased. The grant was confirmed on 15<sup>th</sup> December, 2004, with the two petitioners who were said to be the survivors of the deceased each getting ½ share of the deceased's property portion No. 22 of Plot No. 4 Ras Kitua Lamu (hereinafter referred to as the suit property).

3. Five years down the line, the applicant, who is a grandson to the deceased, lodged the current application maintaining that the letters of administration issued to Bwanamkuu Mohamed Omar and Mwanasomo Swo Mwenye were obtained through fraud. The applicant explains that he is the one to whom the deceased entrusted documents pertaining to the suit property.

4. The suit property was not registered at the time the deceased died. The applicant took all the necessary steps to have the suit property registered. He succeeded and obtained the title in his grandmother's name. The applicant then traveled abroad leaving the title to the suit property with Hellen Feiler with whom he was cohabiting. He was later surprised to find that the property had been transferred to Hellen Feiler.

5. The applicant maintained that the purported petitioners did not apply for letters of administration. He produced photocopies of affidavits sworn by each of the petitioners in which they denied having applied for any letters of administration or having transferred the suit property after the confirmation of the grant to one Hellen Feiler.

4. Pursuant to an order made on 17<sup>th</sup> February, 2009 Hellen Feiler was served with the application for revocation of the grant. She was also served with a hearing notice. However, Hellen Feiler did not file any response, nor did she attend court for the hearing of the application.

5. I have carefully considered the application, the affidavit in support and the annexures thereto. I have also considered the submissions which were made by the applicant's counsel and the authorities cited. A serious allegation has been made concerning the petition which was filed before this court, it been alleged that the grant was obtained by fraud as none of the petitioners filed the application.

6. A perusal of the court file reveals affidavits which were duly sworn by the petitioners before different advocates. The affidavits were sworn in support of the petition and in support of the application for confirmation of the grant. None of the petitioners have sworn any affidavit in support of the application for revocation of the grant. Their denial of participation in the petition for the grant has come indirectly through an affidavit sworn by Omar Lali Omar. Copies of affidavits purportedly sworn by the petitioners denying having petitioned for the letter of administration or having sold the suit property to Hellen Feiler have been exhibited. The question is what was so difficult about the petitioners directly swearing positively to these facts in support of this application.

7. Secondly, the applicant is a grandson to the deceased.

The petitioners who are the children of the deceased have priority over him in obtaining letters of administration. The question is why should the letters of administration which was issued to the petitioners be revoked when the applicant has not shown that he is the beneficiary of the estate. Revocation of a grant is a serious issue. If indeed the petitioner did not apply for the grant, then they are the right people to apply for the revocation of the grant.

8. I find that the applicant has not established any fraud.

It would appear to me that the applicant is simply seeking the revocation of the grant to defeat the transfer of the suit property to Hellen Feiler. In my view, without the involvement of the petitioners to whom the grant was issued this application is suspect.

9. The upshot of the above is that the application must fail. It is accordingly dismissed.

**Dated and delivered this 26<sup>th</sup> day of July 2011.**

**H. M. OKWENGU**

**JUDGE**

In the presence of:-

..... for the plaintiff  
..... for the defendant  
..... Court Clerk