



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
SUCCESSION CASUE NO. 446 OF 2004
IN THE MATTER OF THE ESTATE OF ALEX KAHINDI KATANA [DECEASED]
R U L I N G

Before court is a summons for Revocation Annulment of Grant dated 2/7/2010. The application is supported by the affidavit of one **STEPHEN NGUMBAO KATANA**. The deceased to whose estate this application refers is one **ALEX KAHINDI KATANA**, who passed away in Kilifi District Coast Province on 2/6/2004. An application for Grant of Letters of Administration was made and letters were issued and later confirmed to **ELISHEBA KABIBI KATANA** (now also deceased) and **ALLAN RODGERS KATANA** (a son to the deceased). The applicant now avers that the Grant of letters of Administration were obtained by way of fraud and misrepresentation. This is because only five (5) beneficiaries were listed in the original application whereas the applicant claims that the deceased was in actual fact survived by eleven (11) beneficiaries. The application was opposed by way of a replying affidavit sworn by Allan Katana dated 30/9/2010.

The application was argued by way of written submission and both parties duly filed their submission on 3/05/2011 and 6/06/2011 respectively. The initial application made for Grant was made by widow and son of the deceased. It was supported by a letter from the District Officer Mariakani one **M.W.L. LERAREMO**, dated 30/8/2004 in which five beneficiaries are named to the estate.

In this present application the applicant has annexed a letter purportedly from the Assistant Chief of Mariakani sub-location dated 14/9/2010 indicating that the deceased was polygamous and had two wives and ten (10) children. I note that this letter omits to include the name of the 1st wife 'Elisheba Kabibi' though the name of a 2nd wife **JANET UMAZI NDEGWA** is included. Even if this other wife is deceased in the interests of transparency this second letter ought to have included her name and indicated that she was deceased.

S 76(b) of the law of succession Act cap 160 provides;-

'A grant of representation, whether or not confirmed, may at any time be revoked or annulled of the court decided either on application by any interested party or of its own motion'

(b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case' [my own emphasis]'

The term used in s. 76(b) is an application by an interested party. To my mind such interested party would likely include any beneficiary who ought to have been named but was not so named and was therefore aggrieved due to the prejudice he/she stood to suffer.

The applicant herein is **not** one of such beneficiaries who were so left out.

Indeed apart from having the same last name as the deceased the applicant does not state his exact relationship to the deceased, his interest in the deceased's estate, how he is aggrieved or what prejudice he stands to suffer. The applicant has no authority to act on behalf of those he has named. He is to all intents and purposes a mere 'busy body'. It is curious why none of these so called beneficiaries whose interests the applicant appears to be championing has come to court themselves to seek a revocation of the Grant. In the case cited by counsel for the applicant in his submission **IN THE MATTER OF THE ESTATE OF SAULO OKONYOLO OKUTOYI (deceased) HIGH COURT SUCCESSION CAUSE 6 OF 1997(KAKAMEGA)**, which cause was decided by my learned brother Hon. Justice Fred A Ochieng, the court was dealing with an objection made by one of the sons of the deceased. As a son the objector clearly had an interest in the deceased's estate and stood to suffer direct prejudice due to his exclusion as one of the beneficiaries. The circumstances of the **Saulo Okutoyi case** are therefore clearly distinguishable from the present case.

The applicant herein has annexed to his supporting affidavit three (3) birth certificates of three children allegedly fathered by the deceased. **JOSEPH THOYA** was included as a beneficiary in the original application for Grant and must have obtained his share of the deceased estates. The remaining two (2) birth certificates relate to

1. **JANET DAMA**
2. **GEORGE KATANA**

The applicant has alleged that the mother of George Katana one **JANET UMAZI NDEGWA**, is one of the beneficiaries allegedly left out of the original grant. However, no mention is made of the **GENORE MWANDILO JAPHET KARANI**, the named mother of Janet Dama. What was her status? Why has the applicant excluded her from his "exhaustive" list of "genuine beneficiaries? If as alleged by the letter of the Assistant chief of Mariakani, the deceased was polygamous, he could have easily had two or more wives. Why name one and leave out the other? This omission convinces me that the applicant himself is guilty of concealment and does not come to this court with clean hands.

The letters of Administration now being sought to be revoked were issued to the two administrators on 25/7/2005. This application is brought on 2/7/2010 five (5) full years after the fact. Where have the applicant and these alleged beneficiaries been all this time and why did they not raise this objection at the time when objections were invited i.e when the application for Grant was gazetted. Due process was followed and the Grant was lawfully issued. All these people had ample time and opportunity to make their objections (if any) known. They did not do so. They sat on their rights for five (5) years then the applicant who had no demonstrable interest in this matter files the present application. I can only conclude that this application is not brought in good faith. Why would the Assistant Chief five years after the death of the deceased suddenly remember that the deceased was polygamous and had other children? Did the deceased embrace polygamy after his death? On the whole I find no merit and no basis in this present application. I hereby dismiss the same in its totality and direct that each party pay its own costs.

DATED and delivered in Mombasa this 8th day of September 2011.

M. ODERO
JUDGE

In the presence of

Mr. Lewa for Applicant

No appearance by the respondent

M. ODERO
JUDGE
08/09/2011

