



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KITALE**

Succession Cause 52 of 2005

IN THE MATTER OF THE ESTATE OF APPOLLOS MWANGI MUNA – deceased.

AND

APPOLLOS HIRAM MUNA.....PETITIONER.

R U L I N G .

By summons for revocation of grant dated 10th December, 2009, pursuant under section 76 of the Laws of Succession Act, Rule 44 and 73 of the Probate and Administration rules, the applicant seeks orders.

- (1) THIS, application be certified as urgent and same be heard ex-parte at the 1st instance.
- (2) THAT, this court be pleased to issue orders preserving the estate of the late APPOLLO MWANGI MUNA pending the hearing and determination of the application.
- (3) THAT, this honourable court be pleased to revoke the grant of probate herein issued to APPOLLO HIRAM MUNA, the Respondent herein.
- (4) THAT, costs be provided for.

The application is based on the grounds:-

- (a) THAT, the grant of probate herein was obtained fraudulently by making of a false statement that the applicant had the consents of other beneficiaries.
- (b) THAT, the grant of probate herein was obtained by concealment of a material fact that is the beneficiaries of the estate herein were desirous of having joint excise.
- (c) THAT, the proceedings to obtain the grant were defective.
- (d) THAT, the Respondent has not proceeded diligently with the administration of the estate herein has he has been constantly threatening other beneficiaries
- (e) THAT, it is in the interest of justice that the estate herein be preserved pending the determination of this application.
- (f) THAT, the will the basis of the grant is not genuine.
- (g) THAT, it is in the interest of justice that the orders sought herein be granted.

The application is predicated upon the annexed affidavit of Elizabeth Wanjiru Mwangi sworn on 10th December, 2009.

On behalf of the applicant, it was urged that the deceased Apollo Mwangi Muna died on 24th September, 2001 and a grant of probate in respect of his estate was granted to Apollo Hiram Muna, the respondent.

Subsequently the respondent petitioned for the grant of probate without the consent or knowledge of the other beneficiaries.

It was the applicant's contention that he neither gave his consent nor did the other beneficiaries. Consequently, the applicant concealed material facts to this honourable court.

Upon obtainment of the letters of administration as aforesaid the respondent has embarked on a mission of mismanaging the estate of the deceased. In support of this contention is exhibit "EMW 2" – copies of minutes and revoked Power of Attorney endorsed by the deceased. The grant was obtained fraudulently hence this application.

The application has not been served as yet. In the circumstances, I order that this application be served upon M/s. Kiarie & Co. Advocates who are on record for the respondent, to respond to the same within 14 days of service. Thereafter a mutually agreed date be taken for inter-partes hearing.

Dated and delivered at Kitale this 3rd day of February, 2010.

N.R.O. OMBIJA.

JUDGE.

Mr. Bungei for applicant.