



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KAKAMEGA**  
**Succession Cause 181 of 1993**  
**IN THE MATTER OF THE ESTATE OF MAKUMBA KHAEMBA MALALA – DECEASED**  
**BETWEEN**

**G. J. KHAEMBA MULALA.....PETITIONER**

**VERSUS**

**WILSON WAKHUNGU MAKUMBA.....APPLICANT**

**RULING**

1. The estate herein relates to one Makumba Khaemba Mulala who died on 21.1.1977 at Lukume Sub-location, South Kabras Location. In the Petition for Letters of Administration filed on 14.6.1993, one G. J. Khaemba Mulala claimed in Form P & A 5 that he was the sole surviving heir of the deceased and having obtained the Grant of Letters of Administration on 10.8.1993 he had the said Grant confirmed on 17.8.1994 and title No. Kakamega/Lukume/351 was wholly transmitted to him.
2. On 1.9.2005, one Wilson Wakhungu Makumba applied for revocation of the grant under S.76 Rule (II) of the Law of Succession Act, Cap 160 on the grounds that G. J. Khaemba Malala had failed to administer the estate diligently and that he had concealed the fact that the deceased had other dependants and beneficiaries who were not named in the Petition.
3. At paragraph 5 of the Affidavit in support sworn on 3.8.2005, the dependants and beneficiaries are named as;
  - i. Michael Ndombi Makumba
  - ii. Morris Wafula
  - iii. Reuben Wafula
  - iv. Wilson Wakhungu Makumba
  - v. Namuchuu Nyongesa
  - vi. Winny Mukobi
  - vii. Josphat M. Makumbo
4. Wilson now seeks orders that he should be appointed as administrator of the estate of his late father.
5. G. J. Khaemba Malala has never responded to the Application and although served to attend the hearing on 15.2.2010, he failed to do so and Wilson Wakhungu Makumba repeated his assertions in open court with no challenge from his absent brother.
6. Section 76 of the Law of Succession Act, Cap 160 provides as follows;

***“76. A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides either on application by any interested party or of its own motion -***

- a) *That the proceedings to obtain the grant were defective in substance;*
- 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;*
- c) *That the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;*
- d) *That the person to whom the grant was made has failed, after due notice and without reasonable cause either –*
  - i. *To apply for confirmation of the grant within one year from the date thereof, or such longer period as the court has ordered or allowed; or*
  - ii. *To proceed diligently with the administration of the estate; or*
  - iii. *To produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or*
- e) *That the grant has become useless and inoperative through subsequent Circumstances.”*

7. In this particular case, all evidence points to the fact that G. J. Khaemba Malala came to this court sometime in 1993 and held himself out as the sole beneficiary of the estate of his late father. The identity of beneficiaries and their interests in an intestate's estate is a material factor and once concealed, then the grant was obtained fraudulently. Worse of all, where a Petitioner then has the sole asset in the estate transmitted to him without other and existent beneficiaries knowing, then that conduct also amounts to fraud.
8. In the end, I see merit in the Application before me and therefore;
- a) the grant issued on 10.8.1993 and confirmed on 17.8.1994 is hereby recalled and revoked;
  - b) Further, Wilson Wakhungu Makumba is appointed administrator of the estate of Makumba Khaemba Mulala.
  - c) The above being the case, title No. Kakamega/Lukume/351 shall revert to the names of Makumba Khaemba Mulala (deceased) and any other registration is hereby ordered to be cancelled pending further orders of this court.
9. Costs shall be in the cause.
10. Orders accordingly.

*Delivered, Dated and Signed at Kakamega this 15<sup>th</sup> of April, 2010.*

**ISAAC LENAOLA**  
**JUDGE**