



**s. 76 Laws of Succ Act & S. 128 of RLA: Orders of Inhibition  
Revocation of Confirmed Grant obtained through concealment and false Statement.**

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**SUCCESSION CAUSE NO. 294 OF 1994**

**IN THE MATTER OF THE ESTATE OF RUTERE RWITO .....DECEASED.**

**JASON MURITHI RINGERA.....PETITIONER**

**VERSUS**

**ZIPPORAH NDURU**

**RUTERE.....OBJECTOR.**

**RULING**

The application under consideration is a Summons for Revocation of Grant brought under section 76 of the Law of Succession Act and rule 44(1) of P & A Rules and Section 128 of the Registered Land Act. The applicant is seeking two substantive orders:

1. That this application be certified as urgent and the same be heard ex-parte in the first instance.
2. That the honourable court be pleased to issue an order of inhibition restricting any kind of dealings including cultivating and felling down of trees in land parcel NO. ABOGETA/L-KITHANGARI/52 until this cause is heard and determined or until further orders of the court.
3. That the Honourable court be pleased to issue an order revoking the grant of letters of administration issued to the Petitioner herein on 8<sup>th</sup> May 1995.
4. That the petitioner be ordered to pay the costs of this summons.

The application is premised on grounds on the face of the application as follows:

- (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.
- (c) That the grant was obtained by the concealment from the court of something material to the case.
- (d) That the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant.

(e) That the petitioner is an imposter over the estate of the deceased.

The application is supported by an affidavit sworn by the applicant/objector to this application. In that affidavit the applicant deposes that the petitioner in the Succession Cause was an imposter who had no relationship whatsoever with the deceased. The applicant deposes that the petitioner described himself as a son of the deceased and also gave a list of other children of the deceased who are his are the petitioner's siblings and therefore who have no relationship with the deceased. The applicant deposes that the petition was filed secretly in 1994 brothers and the intention was to fraudulently take away the estate of the deceased and disinherit the applicant and the children of the deceased. The applicant deposes further that unaware of the existence of the instant petition she filed another Succession Cause No. 132 of 2007 and was issued with a grant which annexed to the application. The petitioner says that she became aware of the instant petition when the petitioners mother entered the suit land and started cultivating cutting trees and wasting it in March 2010. She says that she reported the matter to the area chief who issued the petitioners mother with a warning letter which is annexed to the application. The applicant deposes further that it was when the letter was delivered to the petitioner's mother that the petitioner boasted that he had a title to the suit land. The applicant deposes that she went to the Land Registry and bought a copy of the green card of the suit land which is annexed herein and from which she confirmed that indeed the petitioner transferred the suit property to himself on the 20<sup>th</sup> November 2008.

This application was served on the petitioner however the petitioner did not oppose the application either by way of a replying affidavit or grounds of opposition. The application is therefore unopposed.

Mr. Mwirigi prosecuted the application on behalf of the applicant who is also the objector. Counsel submitted that the petitioner herein is an imposter and that he took out the letters of administration over the estate of the deceased in 1994 and that in that application he described himself as the son of the deceased which is not true. The counsel relied on the supporting affidavit which I have considered at length and also summarized in this ruling.

I have carefully considered this application. The affidavit in support of the petition for letter of Administration filed by the petitioner herein at paragraph 4 it is indicated that the deceased died Intestate and that he was survived by six step sons and one brother. The petitioner deposes in the same affidavit that he is related to the deceased by reason of being his only son.

I have looked at the petition itself and the entire documentation filed by the petitioner herein there is no letter from the chief confirming the dependants or family of the deceased. Also missing is a consent signed by the beneficiaries of the deceased confirming that they were not opposed to the petitioner taking out the letters of administration. There is prima facie evidence of irregularities in the matter in which the petition was filed.

I have considered that the petitioner was served with the petition but he filed no papers which means that he was not opposing the prayers sought in this application. I am satisfied that there is prima facie evidence that the letters of Administration that were issued to the petitioner on 8<sup>th</sup> May 1995 were obtained fraudulently and through misrepresentation. I will allow this application and order as follows:

- 1. An order of inhibition be and is hereby issued restricting any kind of dealings including cultivating and felling of trees in land Parcel No. ABOGETA/L-KITHANGARI 52 until this cause is heard and determined or until further orders of the court.**
- 2. The grant of letters of Administration issued to the petitioner on 8<sup>th</sup> May 1995 issued to the petitioner be and is hereby revoked.**
- 3. The petitioner will pay the costs of this summons.**

Dated Signed and delivered at Meru this 19th day of November 2010

**LESIIT, J**

**JUDGE**

In the presence of the parties  
Kirimi – Court Clerk.  
Mr. Kiautha Arithi for applicant.  
Respondent in person.

**LESIIT, J**

**JUDGE**

DATE 19<sup>th</sup> November 2010

**CORAM**

Hon. Lady Justice J. Lesiit – Judge

C/Clerk Kirimi/Cecily

Mr.                    for Applicant

Mr.                    for Defendant

**ORDER**

Judgment/Ruling delivered in open court.

**J. LESIIT**

**JUDGE.**

DATE 19<sup>TH</sup> November 2010

**CORAM**

Hon. Lady Justice J. Lesiit – Judge

C/Clerk Kirimi/Cecily

Mr. Petitioner

Mr. For Ojector

ORDER

Judgment/Ruling delivered in open court.

**J. LESIIT**

**JUDGE.**