



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KITALE

Succession Cause 97 of 2005

N K O DECEASED.

AND

A K M

J O. K..... PETITIONER.

R U L I N G.

By an application by way of summons, pursuant to the provisions of sections 47 and 76 of the Law of Succession Act (Cap 160) Laws of Kenya and Rule 44 of the Probate and Administration Rules, the applicant seeks orders:-

- (1) **THAT**, the letters of Administration to **A K M** and **J O K** made on 28/6/2005 be revoked and/or annulled on the ground that the grant was fraudulently obtained by making of a false statement and there was concealment of material particulars.
- (2) **THAT**, costs of this application be provided for.

The application is predicated on the annexed affidavit of J N N alias J N N sworn on the 21st day of October, 2005.

On behalf of the objector, it was argued that the deceased was her husband. He had three wives. The applicant was the third one.

That notwithstanding the fact that she was the third wife, the applicant was not consulted when succession proceedings were filed in court. She did not sign the consent in respect of the grant of letters of administration. Equally she was not held out or indicated as one of the wives who survived the deceased.

In addition to the foregoing the children whose names are itemized below were left out yet they qualify as beneficiaries.

- (a) A K - Daughter - 20 years.
- (b) M K - Daughter - 7 years.
- (c) S K - Daughter - 5 years.

- (d) O K - Son - 16 years.
- (e) V K - Son - 14 years.
- (f) A K - Daughter - 24 years.
- (g) B K - Daughter - 25 years.
- (h) G K - Daughter - 27 years.
- (i) J K - Son - 12 years.

That the petitioner also concealed from the court the names of other beneficiaries of the estate of the deceased who had purchased part of 22 acres of a parcel of land known as [particulars withheld]

By reason of the foregoing it was the applicants case, that the letters of administration were obtained fraudulently by concealing material facts from the court. Hence the same should be revoked.

The application was served upon the respondent as per the affidavit of service of P O sworn on the 14th day of May, 2009. The respondent failed to attend the court. On application I granted the objector leave to proceed ex-parte.

It is now settled law that application for revocation of grant should be based on the grounds set out in section 76 of the Succession Act. In this connexion I call in aid the persuasive authority of **IN THE MATTER OF THE ESTATE OF P M N (DECEASED) NAIROBI HC P & A NO. 659 OF 1989 (W – J)**

On the evidence, it is clear to me that the proceedings to obtain the grant were obtained by non-disclosure or concealment of important matters or information:-

One, that the objector was a third wife of the deceased.

Two, that there were other dependants other than the applicant.

In the premises, I revoke the grant issued on 28th June, 2005. The persons entitled to the grant of letters of administration under section 66 of the Succession Act (Cap 160) be at liberty to make fresh application for the grant. There shall be no orders as to costs.

Dated and delivered at Kitale this 28th day of May, 2009.

N.R.O. OMBIJA.

JUDGE.