



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KAKAMEGA**  
**Succession Cause 6 of 1997**

**IN THE MATTER OF THE ESTATE OF SAULO OKONYOLO OKUTOYI – DECEASED**

**BETWEEN**

**ANNA CHIBOLE ASWANI ..... PETITIONER/RESPONDENT**

**VERSUS**

**STANLEY OUTA OKONYOLO ..... OBJECTOR/APPLICANT**

**RULING**

This is an application for revocation and annulment of a grant.

It is the applicant's case that the grant to the petitioner, ANNA CHIBOLE ASWANI, was obtained fraudulently, by making a false statement. The petitioner is faulted for stating that the deceased, SAULO OKONYOLO OKUTOYI, was only survived by two children, being ELIAKIM OKETI and the Petitioner.

That statement is said to have been fraudulent because the deceased was actually survived by five children, namely;

- (i) Stanley Outa Okonyolo;
- (ii) Fredrick Masengo;
- (iii) Eliakim Oketi;
- (iv) Philip Okutoyi Outa, and
- (v) Anna Chibole Aswani.

Secondly, the petitioner is accused of obtaining and using a letter from the Assistant Chief of Shitari Sub-location, whereas the relevant sub-location is Lunza.

Thirdly, the petitioner is accused of having obtained the confirmation of the grant hurriedly, prematurely and unprocedurally, as it was done before the expiry of 6 months from the date of issuance of the interim grant.

The applicant says that he is the eldest son to the deceased, whereas the petitioner was his younger sister, who was married. Therefore, the applicant believes that the petitioner did not have a right to either inherit or to administer the estate.

In answer to the application, the petitioner contends that the process of obtaining the grant and the confirmation thereof was all above-board. Her contention is founded upon the fact that the Probate and Administration Cause herein was duly advertised in the Kenya Gazette. Therefore, in her view, the exercise was not at all secretive.

The Petitioner also disclosed that there had been filed another Succession Cause, being No. 84 of 1999, in relation to the estate of the late SAULO OKONYOLO OKUTOYI.

Following that disclosure, the parties consented to the consolidation of the 2 Causes, and on 27<sup>th</sup> January 2005, the court did grant an order for the said consolidation.

It is significant to note that whereas the petitioner had suggested that the applicant herein had been the petitioner in Succession Cause No. 84 of 1999, the fact is that the Petitioner in that case was WILSON OLUBWOYO OKONYOLO.

As the Petitioner herein, ANNA CHIBOLE ASWANI, has not denied the assertion that the deceased was survived by five children, whose particulars are set out herein-above, I find that the petitioner did conceal some material particulars from the court, at the stage when she applied for the grant herein. I so find because whereas the deceased was survived by five children, the petitioner only cited two children.

But, in the same vein, I find and hold that WILSON OLUBWOYO OKONYOLO, also withheld material particulars from the court, in Succession Cause No. 84 of 1999. He too, only disclosed two of the five children, who survived the deceased.

In effect, both parties before me are equally guilty of withholding material particulars from the court.

Furthermore, both the parties are guilty of not placing before the court, a full inventory of all the assets constituting the estate of the deceased. Whereas, Wilson Olubwoyo Okonyolo only cited Title No. MARAMA/LUNZA/2014, ANNA CHIBOLE ASWANI only cited MARAMA/LUNZA/2017.

It is important to emphasize that the role of an administrator of the estate of a deceased person is to place before the court the names of all beneficiaries and also a complete list of all the assets.

In this case, both parties fell short of the legal requirements in that regard.

The justification by either of them was that prior to his demise, the deceased had already indicated how he wished to divide his land, between his offspring.

If, by so saying, the parties were suggesting that the Succession Causes were filed in such manner as to reflect the wishes of the deceased, I regret that they are both wrong in that respect too.

I say so because if there was a will, indicating the wishes of the deceased, the said deceased would not have been deemed to have died intestate. Instead, the court may only have been called upon to give effect to the will.

However, the parties decided to file 2 separate Succession Causes, in relation to one deceased person. That action was completely wrong, as any one person who is deceased is only deemed to have left behind one estate. In respect to that deceased person and his said estate, there ought to be only one Succession Cause, pursuant to which the interim administrator will gather all the assets.

After a full inventory of all the assets and the liabilities is put together by the interim administrator, the said administrator is required to apply to the court for confirmation of the grant.

At the stage of the confirmation, the court distributes the estate to the beneficiaries, whilst taking into account the liabilities, if any.

As neither of the parties herein proved the existence of a will, and as the said parties actually declared that the deceased had died intestate, they are equally wrong to have allocated between themselves, (and people of their own choice), parts of the estate.

From the record of the proceedings, it is evident that on 23<sup>rd</sup> May 1997, the petitioner herein filed an application for waiver of the 6 months which is supposed to lapse before a grant can be confirmed.

On 28<sup>th</sup> July 2007, Hon. Tanui, J. ordered that the grant be confirmed. That order was made in the absence of the applicant herein.

Furthermore, the record on that date is so brief that it is not possible to appreciate the reasons why the court deemed it appropriate to confirm the grant before six months had lapsed from the date of issuance. The record of proceedings on 28<sup>th</sup> July 1997 reads as follows:-

“28/7/97

**Coram – Tanui, J.**

**Applicant present**

**Chesang c/clerk**

**Order – Grant Confirmed.**

.....”

**(Signed)**

The court granted the order for the confirmation of the grant. And even though the proceedings on that date were very brief, the applicant herein has not demonstrated why this court should now find the confirmation to have been hurried, premature or uprocedural.

Meanwhile, the applicant concedes that the petitioner is a daughter to the deceased. However, he did not demonstrate to this court why the applicant lacked capacity to administer the estate or to inherit anything therefrom.

In my understanding of the law on succession, there is no discrimination amongst the children of a deceased person, because of either gender or the fact of marriage.

Therefore, had that been the sole ground upon which the applicant sought to have the grant revoked or annulled, I would have had no hesitation in dismissing it.

However, as I have found that the grants herein were issued on the strength of information which was rendered incomplete, due to the fact that both parties had withheld material information from the court, it is hereby ordered that the grants in both Succession Cause No. 6 of 1997 and in Succession Cause No. 84 of 1999 be revoked forthwith.

As each of the parties is blameworthy, I order that each of them should pay his or her own costs of the application.

The grants held by the parties should be returned to court for cancellation within the next 7 days.

Meanwhile, the learned Deputy Registrar of this court is directed to notify the Land Registrar about this order of revocation of the grants, so that there can be no further transactions undertaken by the holders of the grants, in respect of;

- (i) L.R. NO. MARAMA/LUNZA/2681;
- (ii) L.R. NO. MARAMA/LUNZA/2682;
- (iii) L.R. NO. MARAMA/LUNZA/2017;

until further orders of this court.

***Dated, Signed and Delivered at Kakamega this 29<sup>th</sup> day of September, 2008.***

**FRED A. OCHIENG**

**J U D G E**