



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA

Succession Cause 202 of 2002

IN THE MATTER OF THE ESTATE OF CHRISTOPHER Omutanyi SHITUBI (DECEASED)

BETWEEN

1. REFA WERE Omutanyi.....PETITIONERS

2. REUBEN Ombili Omutanyi.....RESPONDENTS

A N D

Wycliffe Namai Omutanyi.....OBJECTOR/APPLICANT

RULING

The Objector, **Wycliffe Namai Omutanyi**, filed the Summons for revocation of Grant on 3.2.2006 seeking an order that the Grant of Letters of Administration made on 16.7.2002 to Refa Were Omutanyi, and Reuben Ombili Omutanyi, and the Confirmed grant dated 21.3.2005 be revoked or annulled. The Petitioners appeared to have been served but did not file a replying affidavit nor did they attend the hearing.

Mr. Nadwa, learned Counsel for the Objector, urged the court to annul the Grants on the ground that there was material non disclosure as not all the names of the heirs and not all properties comprised in the estate were disclosed.

Although the deceased was survived by a widow, Refa Were Omutanyi, and two sons, Reuben Ombili Omutanyi and Wycliffe Namai Omutanyi, the Petition did not disclose the name of Wycliffe Namai Omutanyi, the second son and objector. And although the deceased left two parcels of land Nos. Marama/Lunza/2446 and Marama/Lunza/270 which constituted his estate, the Petitioners only disclosed land parcel No. Marama/Lunza/2446. The Objector averred in his supporting affidavit sworn on 30.1.2006 that the Petitioners did not inform him when they were applying for the Grant of Letters of Administration Intestate and had not given his consent which had not been sought or obtained.

Under the provisions of **section 76** of the **Law of Succession Act, Cap 160**, the court may on application or of its own motion revoke or annul a Grant of representation whether confirmed or not confirmed and at any time if it is satisfied, *inter alia*, 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.

I am satisfied on the basis of the allegations made on oath by the objector which allegations were not

controverted that the Petitioners obtained the Grant of Letters of Administration by concealing from the court the fact that the objector was a son of the deceased. They also concealed from the court that the deceased had also left as part of his estate land title No. Marama/Lunza/270 measuring 1.3 hectare.

I am satisfied and it is my finding that the Petitioners acted fraudulently in concealing that the Objector was an heir and in concealing the full extent of the estate .

I grant the order sought in the said Summons by the Objector and hereby revoke and annul the Grant of Letters of Administration Intestate made on 16.7.2002 to Refa Were Omutanyi and Reuben Ombili Omutanyi. I also revoke and annul the Certificate of Confirmation of the Grant dated 21.3.2005. I order cancellation of registration of the Petitioners or their successors as proprietors of the land known as Marama/Lunza/2446. I also order that the said parcel of land shall be maintained in the name of the deceased until this cause is determined.

I further order that the parcel of land known as Marama/Lunza/270 shall also form part of the estate of the deceased. The Petitioners shall bear the costs of the objection proceedings.

Dated at Kakamega this 25th day of October, 2007.

G. B. M. KARIUKI

J U D G E