



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KAKAMEGA**

**Succession Cause 10 of 1999**

**IN THE MATTER OF THE ESTATE OF SAULO OKAKA (DECEASED)**

**BETWEEN**

**DAVID NDALO OKAKA.....PETITIONER**

**A N D**

**CHARLES OMATWA OKAKA.....OBJECTOR**

**RULING**

**CHARLES OMATWA**, the objector herein, took out on 21.6.2004 a Summons dated 5.4.2004 under Section 76 of the Succession Act, Cap 160, and under Rule 44(1) of the Probate and Administration Rules (and not “Order 44(1)” as stated by the Objector). The reference to “order” was a misnomer. I take it that the objector meant “rule”. The objector sought in the Summons revocation of the Grant of Letters of Administration Intestate made on 4-5-1999 to David Ndalo Okaka. He alleged in his affidavit sworn on 05.04.2004 in support of the said Summons that Saulo Okaka, the deceased in this cause, was his father and the administrator his brother. He averred that when his brother, David Ndalo Okaka, petitioned for the Letters of Administration Intestate in this cause, he failed to disclose that the objector was also an heir and, instead, fraudulently stated that he was the only heir to the deceased. Further, he caused the Grant to be confirmed. The administrator introduced as an heir one Rodgers Michael Obwamu Odwongi who was not related and was a stranger to the deceased and transferred to him 3.0 acres of the land comprised in the title No. KISA/IKOMERE/1784 which the deceased died owning while he, the administrator, took the remaining 1.2 acres.

The said Administrator was served on 27.9.2004 at Manyulia market with the Summons for revocation of the Grant by one Zablon Ochieng Senge, a process server, as is evidenced by the latter’s affidavit sworn and filed in court on 18/11/2004. The objector did not file any replying affidavit nor did he take any action to oppose the said Summons which came up for hearing before me on 23-4-2007.

Under section 76 (a) of the Law of Succession Act, Cap 160, a grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by an interested party or of its own motion that the Grant was obtained fraudulently by the making of a false statement or by concealment from the court of something material to the case. Under s. 76 (c), the court may revoke a grant that 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.

I have perused the application herein and duly considered the submission of the objector’s learned counsel, Mr. Khalwale. It is a fact that the administrator, David Ndalo Okaka, did not controvert the allegations that he violated the provisions of section 76 (b) and (c) of the Law of Succession Act, Cap 160. In the circumstances it is my finding that the administrator/Petitioner, David Ndalo Okaka, violated the provisions of section 76 (b) & (c) of the Law of Succession Act.

Accordingly, I revoke and annul the Grant made on 4-5-1999 to the Petitioner, David Ndalo Okaka, as well as the Certificate of Confirmation of the said Grant dated 17.11.1999. I further order that the parcel of land known as KISA/IKOMERE/1784 shall be retained in the name of the deceased, **SAULO OKAKA**, and the registration of David Ndalo Okaka and Rodgers Michael Obwamu Odwongi or their

successors in title shall be cancelled forthwith. This order shall be served on the District Land Registrar of the area where the said land is registered and records maintained for his appropriate action. The costs of this proceedings shall be borne by the Petitioner, David Ndalo Okaka.

*Dated at Kakamega this 8<sup>th</sup> day of November, 2007.*

**G. B. M. KARIUK**

**J U D G E**