



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**Succession Cause 412 of 1998**

**IN THE MATTER OF THE ESTATE OF CHENG'OLI CHIKAMAYI (DECEASED)**

**BETWEEN**

**FRONICAH CHENG'OLO.....PETITIONER/RESPONDENT**

**VERSUS**

**RASTO CHENG'OLI.....OBJECTOR/APPLICANT**

**AND**

**RAPHAEL MUKANGAI..INTERESTED PARTY/RESPONDENT**

**RULING**

The Objector, **RASTO CHENG'OLI**, sought orders in his summons dated 27-3-2006 for revocation of the Grant of Letters of Administration Intestate made on 15-4-1999 to **Fronica Cheng'oli** in the estate of **Cheng'oli Chikamayi**, deceased, and the certificate of confirmed grant dated 27.4.1999. The main ground for the application was that a stranger was included as an heir in the said estate namely Raphael Mukangai, while the rightful heirs whose names were not spelt out were excluded. The Grant was confirmed on 27<sup>th</sup> April 1999. The summons for revocation of the Grant and the Confirmed Grant was instituted on 28.3.2006. The Objector avers in his affidavit sworn on 27/3/2006 in support of the summons for the revocation of the Grant that the Petitioner and Administratrix of the estate was his mother Fronica Chengoli. The Objector has not made as much as a whimper regarding the considerable delay of more than 8 years. I would have been disinclined to entertain the application but for the affidavit of the administratrix who has confirmed that she is not literate and was hoodwinked into including as heirs names of persons other than the deceased's lineal descendants. In particular, Raphael Mukangai who was not a son of the deceased was included as a son of the deceased in the affidavit sworn on 27/4/99 by the Petitioner. The affidavit told a lie and a stranger infiltrated the cause and took away a share of the estate which should have gone to the lineal descendants of the deceased.

It is my finding that the proceedings to obtain the grant were defective in substance and it is also my finding that the grant was obtained fraudulently by concealment of something material to the cause. It is also my finding that the grant was confirmed hastily within a period of less than one month without direction of the court. For these reasons I allow the application and annul and revoke the grant made on 15/4/1999 and confirmed on 27/4/99. I make orders in terms of prayers (a) and (b) of the application. It is so ordered.

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

**G. B. M. KARIUKI**

**J U D G E**