



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

**Succession Cause 127 of 1996**

**IN THE MATTER OF THE ESTATE OF ALFRED GWEDEYA LUBEMBE**

**BETWEEN**

**MARY MWIKALI**

**LUBEMBE .....OBJECTOR**

**VERSUS**

**GIDEON GWEDEYA**

**LUBEMBE .....PETITIONER**

**R U L I N G**

For reasons I cannot fathom, the application dated 12-9-96 filed in court on 17-9-96 did not come up for hearing until 29-11-05 when I heard it and reserved the Ruling for delivery today. The application was made by Mary Mwikali Luvembe (the applicant). It sought orders that the Grant of Letters of Administration made on 27.6.96 to Gideon Gwedeya Luvembe (the Petitioner) and confirmed on 9.7.96 be revoked or annulled on the grounds that the application for the Grant was defective in substance and that it was obtained fraudulently by the making of false statement and concealment from the court of something material to the case and finally that the confirmation of the Grant was procured by means of an untrue allegation of fact essential in point of law to justify the Grant.

The deceased, ALFRED GWEDEYA LUBEMBE died on 3-7-95 in Vihiga, Kenya. He was a polygamist and he was survived by two widows, Mary Mwikali Luvembe (1<sup>st</sup> widow) and Esinasi Alividza Luvembe (2<sup>nd</sup> widow) and a son, Gideon Gwedeya Luvembe, and three daughters two of whom were married. It was Gideon Gwedeya Luvembe (the Petitioner) who applied for and obtained the Grant of Letters of Administration Intestate which was made to him on 27-6-96 and confirmed on 9-7-96. The application for revocation of the Grant was filed a week later by the 1<sup>st</sup> widow.

The confirmed Grant shows that the deceased left five properties all of which were confirmed in favour of the Petitioner who is the only son of the deceased.

In her affidavit in support of the application, the Applicant/Objector averred that she was hoodwinked into signing a consent for the Petitioner to be the sole administrator of the estate of the deceased. The Applicant/Objector contended that she was the only lawfully wedded wife of the deceased having been married in accordance with the Marriage Act (Cap 150) and that the Petitioner was the son of the deceased from an invalid marriage and his mother was not an heir.

In his replying affidavit, the Petitioner averred that he obtained the Consent of the Applicant/Objector after he had explained fully to her the nature and effect of the consent and that he did not hoodwink the Applicant/Objector.

Mr. Onyango, learned counsel for the Applicant, urged the court to revoke the Grant and the confirmed grant and relied on the averments in the Applicant's supporting affidavit sworn on 16-9-96 and the further affidavit sworn on 25-10-96. He contended that the applicant was hoodwinked to sign the consent dated 18/4/96 filed in court on 19/4/96 because the Petitioner deluded the Applicant that she would be a Co-administrator of her husband's estate. She is said to have believed this and to have signed in a hurry. Further, Mr. Onyango submitted that the Petitioner had disinherited the Applicant and other dependants. The entire estate had gone to the Petitioner who had even taken property No.NBI/Block 162/196 which belonged to the Applicant. It was Mr. Onyango's further contention that the Grant should not have been confirmed as there were dependants who were maintained from the estate. On the point of concealment of material facts, it was contended by Mr. Onyango that the Petitioner had concealed the name of Moses Luvembe the adopted son of the deceased who was acknowledged by the

Petitioner himself. It was submitted that this concealment was designed to enable the Petitioner to inherit the entire estate alone.

The Petitioner who was represented by C. A. Keverenge Esq., Advocate had filed a replying affidavit to the Applicant's objection and ostensibly caused his uncle, one Javan Chondo Gwedeya to also file an affidavit to support his case. When the hearing came up on 29-11-05, neither the Petitioner nor his advocate attended court although C. A. Keverenge & Co. Advocates had been served with a hearing notice dated 18.7.05.

I have carefully perused the application and the supporting and further affidavits of the Applicant. I have also perused the Petitioner's replying affidavit as well as the affidavit by Javan Chondo Gwedeya, a brother to the deceased sworn on 2/10/96 in support of the Petitioner. I have also duly considered the submissions by the Applicant's counsel.

After carefully analyzing the issues, it seems hardly likely that the Applicant understood that she was giving the Petitioner consent to alone administer the estate of her late husband. At any rate, the right to administer the estate, alone, if there was one, did not include the right to inherit the entire estate to the exclusion of other heirs.

Moreover, the Applicant's property that was not part of the estate could not be properly included in it or be subject to distribution to the heirs of the deceased. The applicant in annexure MMG (1)(A) & 3 attached to her affidavit sworn on 25.10.96 showed that property No. NAIROBI/BLOCK 62/186 was prior to the death of the deceased owned by the Applicant and the deceased as tenants in common. Consequently, when the deceased died, the Applicant alone became the sole owner of it. It was wrong for the Petitioner to include it as part of the estate of the deceased. But not being a lawyer such inclusion could have been innocent as it is likely the Petitioner may not have known the implications of the death of a joint tenant.

In the Petitioner's affidavit sworn on unspecified date in support of the Summons for the Confirmation of the Grant, the Petitioner endorsed his name alone as the only heir. The record of the court on 9.7.06 does not show attendance of any other party besides the Petitioner nor is there evidence that the Applicant was notified of the hearing of the application for the confirmation of the Grant.

It is my finding that the Petitioner was less than candid and that he duped the Applicant to give her consent. It is also my finding that the Petitioner fraudulently omitted the name of the Applicant as an heir. It is further my finding that the Petitioner wrongly included in the estate of the deceased property No. NAIROBI/BLOCK 62/186 which belonged to the Applicant and in respect of which the deceased ceased to have interest upon his death.

I am satisfied that the proceedings to obtain the Grant were defective in substance. I am also satisfied

that the grant was obtained fraudulently by the making of a false statement and by concealment from the court of material evidence to wit that the Applicant had not given her consent and that the Applicant was an heir and the Petitioner took advantage of the ignorance and old age of the Applicant. It is my finding also that the estate of the deceased wrongly included property/properties not belonging to the deceased. Unless the Grants are revoked, the applicant will suffer irreparably.

Pursuant to the inherent powers conferred on this court by Rule 73 of Part XII of the Probate and Administration Rules and in order that the ends of justice may be met, I hereby revoke the Grant of Letters of Administration Intestate made on 27.6.96 to the Petitioner, Gideon Gwedeya

Luvembe, as well as the Confirmed grant dated 9.7.96. The Applicant shall have the costs of these proceedings. It is so ordered.

*Dated, signed and delivered at Kakamega this 2<sup>nd</sup> day of March, 2006.*

**G. B. M. KARIUKI**

**J U D G E**