



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

**Succession Cause 265 of 1996**

**IN THE MATTER OF THE ESTATE OF CHEPKONGA MAINA (DECEASED)**

**AND**

**WILLIE K. MAINA .....1ST PETITIONER/RESPONDENT**

**PAULO LIMO .....2ND PETITIONER/RESPONDENT**

**VERSUS**

**JOHN CHERUIYOT MAINA .....1ST APPLICANT**

**KOECH MAINA .....2ND APPLICANT**

**R U L I N G**

The preliminary objection before me has been raised by WILLIE K. MAINA and PAULO LIMO, who are the administrators of the Estate of CHEPKONGA MAINA against an application by JOHN CHERUIYOT MAINA and KOECH MAINA who have sought an order to revoke the Grant which was issued in their favour on 21/3/2002. It is their ground that the application ought to be struck out as it is incompetent; that the assets were devolved upon confirmation and distribution; that the objectors should have moved the court soon after gazettelement or before distribution of the Estate and in the circumstances the objectors have taken too long, yet they have not advanced any reasons for the delay.

Mr. Otieno who appeared for the objectors, and who opposes the issues raised by the petitioners, was of the view that a Grant may be revoked at any time, and in this connection, he relied on section 76 of the Succession Act Cap 160, which provides that “*a grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion-*

- (a) *that the proceedings to obtain the grant were defective in substance;*
- (b) *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;*
- (c) *that the grant 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;*
- (d) *that the person to whom the grant was made has failed, after due notice and without reasonable*

*cause either-*

*(i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court has ordered or allowed; or*

*(ii) to proceed diligently with the administration of the estate; or*

*(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or*

*(e) that the grant has become useless and inoperative through subsequent circumstances.”*

I have taken the submissions of both counsel into account and I find that the applicants have raised several grounds in their application, which grounds would fall within the ambit of sub sections (a) and (b) hereinabove, and in my humble opinion they would be entitled to prosecute their application, especially in view of the fact that one can apply for revocation at any time either before or after confirmation, and it would not in the circumstances be mandatory that the applicant invokes the provisions of Order XXXVI of Civil Procedure Rules.

I do in the circumstances find that the preliminary objection lacks in merit and do order that this matter be heard within the next 60 days. Parties should endeavor to fix dates on apriority basis. In the meantime there shall be no further transactions or dealings with the assets which are or were comprised in the Estate at the time of the petition.

Dated and delivered at Eldoret this 24th day of November 2006.

JEANNE GACHECHE

JUDGE

Delivered in the presence of:

Mr. Obudho holding brief for Mr. Mbugua for the petitioner

Mr. Otieno for the applicant