



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Succession Cause 1628 of 2005**

**IN THE MATTER OF THE ESTATE OF VINCENT**

**NYANGWARA KABA (DECEASED)**

**RULING**

On 09.11.05 ZIPPORAH KEMUNTO NYANGWARA filed summons dated 07.11.05 under section 76 of the Law of Succession Act, Cap.160 and rule 44 of the Probate and Administration Rules applying for revocation of grant issued on 08.09.05 to KABA NYANGWARA on the following grounds:-

1. That the grant was obtained fraudulently by making a false statement and/or by concealment from court of information material to the case.
2. That the grant was obtained by means of an untrue allegation of fact essential in point of law to justify the grant.

In the same summons the applicant elaborated upon her grounds for the application as under:-

- a) That the petitioner never sought the consent of the applicant for letters of administration testate.
- b) That the petitioner has not listed PRISCAH KERUBO and herself (applicant) as dependants of the deceased.
- c) That the petitioner has in his petition listed an unknown person who is not a dependant of the deceased.

The summons is supported by the applicant's affidavit sworn on 07.11.05. In the said affidavit, the applicant deposes that the deceased died on 29.05.05; that she is his widow and she had one child called Priscah Kerubo with him; that she has been administering the deceased's estate but that the petitioner applied for the grant secretly without involving her; that the deceased was working with Kenya Forestry Research Institute until his death and that he had named her as his nominee; and that, therefore, the grant to the petitioner be revoked. The applicant annexed to her supporting affidavit a letter dated 29.08.05 addressed to her at Turbo Regional Research Station by Kenya Forestry Research Institute, Muguga Headquarters in apparent reply to her letter of 06.07.05 to them. The letter from Kenya Forestry Research Institute, Muguga Headquarters asked her to furnish Headquarters with the following documents to facilitate payment of Death-in-service benefits 'of your late husband', Vincent Nyangwara Kaba:-

- a) Original death certificate;
- b) Original burial permit;
- c) Doctor's summary report;
- d) Letter of surrender of identity.

The letter to her included the following paragraph:

**‘Note that you will be invited by the KEFRI Staff Retirement Benefits Scheme Board of Trustees together with your father-in-law when funds will be available for disbursement of the same.’**

Hearing of the summons was on 29.11.06 whereat the applicant appeared in person while learned counsel, Mr P.N. Areri appeared for the executor/respondent, Kaba Nyangwara. Executor’s counsel informed the court that the executor had filed a replying affidavit sworn on 02.12.05 which had been served on the applicant outside the court at a previous session on 22.02.06 because the applicant had not previously provided an address for service. The applicant said she had not been served with the executor’s replying affidavit sworn on 02.12.05 in that when it was served on her in court, she insisted on it being stamped and served officially and that executor’s counsel took the replying affidavit back and never returned it to her. Executor’s counsel denied taking executor’s replying affidavit back from the applicant.

In the executor’s replying affidavit, the executor deposed that the deceased indeed died on 29.05.05; that the deceased left a widow, NYABOKE NYANGWARA KABA and three children NANCY, KEVIN and JAMES aged 8 years, 6 years and 4 years, respectively; that the grant to him was a grant of probate issued to him on 08.09.05 after due notice was given in the Kenya Gazette of 05.08.05 for any person to raise any objection and that no objection was raised by the applicant or any other person; that he (executor) obtained the grant of probate of the Will of the deceased lawfully as sole executor; that the applicant is not the widow of the testator and was never married to the deceased under any form of marriage as she is married to and/or is cohabiting with another man. The executor denied obtaining the grant of probate unlawfully.

I have duly considered the pleadings including their respective supporting affidavits plus the representations made in court.

There is attached to the petition for a grant of probate of the last will of the deceased Vincent Nyangwara Kaba a written Will dated 08.02.05 ascribed to VINCENT NYANGWA KABA as testator to the effect that after his (Vincent’s) death, his father KABA NYANGWARA shall be entitled to all his (deceased’s) estate and effects thereof absolutely forever. The said Will also appointed KABA NYANGWARA sole executor of the Will and that the said executor would be entitled to obtain probate without being required to furnish any security.

I note that the executor’s affidavit sworn on 15.06.05 in support of the petition for grant of probate stated at paragraph 7 that the deceased was survived by KABA NYANGWARA, described as deceased’s father and KWAMBOKA KABA as deceased’s mother. Nobody else is listed as having survived the deceased, not even NYABOKE NYANGWARA KABA whom the executor described in his replying affidavit sworn on 02.12.05 as the deceased’s widow, nor do NYABOKE’S three children feature in the affidavit as survivors.

As noted earlier, the letter of 29.08.05 from Kenya Forestry Research Institute, Muguga Headquarters to the applicant herein referred to a letter of 06.07.05 from the applicant. The contents of the applicant’s letter of 06.07.05 have not been disclosed to this court. The applicant has not disclosed if she furnished Kenya Forestry Research Institute, Muguga Headquarters with the documents the said Headquarters called for from her. More fundamentally, the applicant has not furnished evidence that she has subsequently been called to and appeared before the KEFRI S Staff Retirement Benefits Scheme Board of Trustees with her father-in-law for disbursement of in-service benefits of the deceased. The applicant’s summons for revocation of the grant to the executor of probate of the Will ascribed to the deceased leaves gaping holes and does not establish the fraud or falsity alleged against the executor to the standard required by law. I find the summons dated 07.11.05 incompetent and the same is hereby struck out. Costs shall be in the cause.

Orders accordingly.

**Delivered at Nairobi this 11<sup>th</sup> day of December, 2006.**

**B.P. KUBO**

JUDGE