

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KAKAMEGA

Succession Cause 240 of 1991

**IN THE MATTER OF THE ESTATE OF PIUS MUCHENDA PUNGA -
DECEASED**

AND

PETER PUNGA PIUS

MARTIN ASITWA ONG'OMBE.....PETITIONERS

VERSUS

ALFRED WENA MUCHENDA

JOANNES OPIYO MUCHENDA.....OBJECTORS

RULING

Summons for revocation of Grant dated 12.6.2004 filed by Messrs Alfred Wena Muchanda and Johannes Opiyo Muchenda came up for directions on 21st October 2004. A replying affidavit had been sworn and filed by Peter Punga Muchenda on his own behalf and on behalf of his co-Petitioner, Martin A. Ongombe.

Mr. Onyino, the Advocate for the Petitioners objected to directions being given on the ground that Rule 44 of Probate and Administration Rules had not been complied with. He contended that Form No. 107 had not been followed. He submitted that the application was fatally defective and should be struck out.

On his part, Mr. Fwaya for the Objectors maintained that the application was properly before the court and that it was not proper for the petitioner's counsel to put up the objection at that stage and in any case without notice. He invited the court to make orders under section 73 of the Probate and Administration Rules.

The substantive law relating to revocation or annulment of a Grant and the grounds thereof are contained in section 76 of the Law of Succession Act, Cap 160. Rule 44 of the Probate and Administration Rules sets out the procedure to be followed by any person desirous of applying to have a grant annulled or revoked is required to apply by summons in Form 107 which must be accompanied by an affidavit of the applicant in Form 14 (for revocation or annulment) setting out the grounds for revocation or annulment and indicating the extent if any to which the estate has been administered.

Once the application is in place, the Registrar is enjoined to place the same before the court and to give the applicant (objector) notice under Form 70 of the Probate and Administration Rules to attend court for directions as to what persons, if any, shall be served by the applicant with a copy of the summons for

revocation or annulment of grant and affidavit and as to the, manner of effecting service.

After directions are given, the applicant is enjoined to serve each of the persons directed to be served with a Notice in Form 68 notifying each of them that an application for revocation and annulment of grant has been filed and directions given for service of the application and requiring such person or persons to file affidavit stating whether they support or oppose the application and the grounds therefor. Thereafter, the court sets down the matter for hearing.

In the instant application, the matter was set down for directions when the Petitioners raised objection. The process was in its inchoate stage and no objection could be brought at that stage by the Petitioners. It was premature. Directions were yet to be given on the issue and manner of service. I cannot but dismiss the objection with costs to the Objectors.

Dated at Kakamega this 11th day of March 2005

G.B.M. KARIUKI

J U D G E