



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BUSIA**

**SUCCESSION CAUSE NO.5 OF 2005**

**IN THE MATTER OF THE ESTATE OF JOSEPH OCHIENG OCHIENG (DECEASED)**

**R U L I N G**

[1] The summons for Revocation of grant dated 6<sup>th</sup> May 2013 and filed herein on 8<sup>th</sup> May 2013 is in respect of the grant of letters of administration intestate issued to Gladys Agutu Ochieng for the administration and distribution of the estate of the late Joseph Ochieng Ochieng (**deceased**) who passed away at the age of sixty-three (**63**) years on 18<sup>th</sup> October 2002.

According to the Chief's letter dated 1<sup>st</sup> October 2004, the deceased was survived by four wives namely Tecla Mukasia Ochieng (**second wife**), Francisca Nyongesa Ochieng (**third wife**), Kefin Nekesa Nakhone (**fourth wife**) and Gladys Agutu Ochieng (**first wife**). From the court record, the grant of letters of administration was initially or originally issued to the second wife (**Tecla or Tekela**) on the 5<sup>th</sup> April 2005, but this was substituted in favour of the first wife (**Gladys**) following the demise of Tecla on 2<sup>nd</sup> December 2004 and pursuant to an application for substitution of the administrator made on 5<sup>th</sup> May 2011 by the first wife and granted on 1<sup>st</sup> November 2012, with orders that the original grant issued to the deceased administrator be revoked and a new grant be issued to Gladys Agutu Ochieng, as the new administrator/petitioner.

[2] Nonetheless, the record does not show or confirm that such new grant was issued to the new **administrator/petitioner**. Neither does the record show that any new grant was confirmed. So, all along this matter proceeded up to this point on the basis of the revoked original grant issued to the second wife of the deceased. Oblivious of this fact, the present application for the revocation of grant was made by the applicant/objector, Hastings, Sebastian Ochieng against the present administrator/petitioner, Gladys Agutu Ochieng, seeking revoking of the grant issued to her, yet there is no such grant. Indeed, the objector was unsure of such grant as demonstrated in prayer one (**i**) of his application in which there is no indication of the date of issuance of the alleged grant.

[3] It would therefore follow that the application despite taking a considerable period of time being heard by way of "viva-voce" evidence was misconceived and fatally defective. It was unfortunate that the error went undetected for a long period particularly by the applicant and the petitioner. All their efforts in preparing and canvassing the application for or against it amounted to a wastage of their time as well as judicial time. Further, the efforts amounted to nought or zero and zero added to zero is zero (nothing). The application was thus nothing but a mirage. So far, there is no grant to revoke as no fresh grant was issued to the present petitioner as ordered by the court on 1<sup>st</sup> November 2012. As such, the application is hereby struck out and dismissed with orders that a fresh grant do issue forthwith to the petitioner Gladys Agutu Ochieng as the first wife of the deceased together with the two other surviving wives of the deceased being Francisca Nyongesa Ochieng (**third wife**) and Kefin Nekesa Nakhone (**fourth wife**).

[4] Further, parties do thereafter engage on the mode of distribution of the estate property and take all necessary summons for confirmation of grant within the next six (**6**) months from the date of issuance of the fresh grant or any shorter period as they deem necessary. Matter be mentioned on 26/10/21 to appraise status and/or further orders.

**J.R. KARANJAH**

**J U D G E**

**[READ AND SIGNED THIS 21<sup>ST</sup> DAY OF JULY 2021]**