



**REPUBLIC OF KENYA**

**IN THE HIGH COURT KENYA**

**AT MERU**

**(CORAM: CHERERE-J)**

**SUCCESSION CAUSE NO 308 OF 2010**

**IN THE MATTER OF THE ESTATE OF M'IMIRONGO M'UTHAKA (DECEASED)**

**BETWEEN**

**ANDREW MURIUKI M'UTHAKA.....1<sup>ST</sup> PETITIONER**

**PATRICK KAMENGU.....2<sup>ND</sup> PETITIONER**

**JOHN MUTUMA ROBERT.....3<sup>RD</sup> PETITIONER**

**AND**

**SUSAN NKATHA.....1<sup>ST</sup> OBJECTOR**

**DAVID MUGAMBI.....2<sup>ND</sup> OBJECTOR**

**LUCY KAMAMI.....3<sup>RD</sup> OBJECTOR**

**FREDRICK KABERIA.....4<sup>TH</sup> OBJECTOR**

**RULING**

**Introduction**

1. Deceased's estate was distributed by a Certificate of Confirmation of Grant dated 14<sup>th</sup> February, 2020.
2. By summons for revocation dated 15<sup>th</sup> September, 2020, 1<sup>st</sup> Petitioner seeks revocation of the grant issued on 14<sup>th</sup> February, 2020 on the ground that 1<sup>st</sup> Objector concealed from court material facts.
3. The application is based on the contention that deceased had made an oral will distributing his estate and had also sold part of his estate to the interested parties. The application is supported by 1<sup>st</sup> Petitioner's affidavit sworn on 15<sup>th</sup> September, 2020 in which he reiterates the grounds on the face of the application.
4. Susan Nkatha (1<sup>st</sup> Objector) by her replying affidavit sworn on 14<sup>th</sup> October, 2029 avers that the 1<sup>st</sup> Petitioner and others filed this cause and stated that the deceased died intestate. She contends that this matter was heard and none of the parties tendered evidence that deceased had made a will nor proved that deceased had sold part of his estate. Finally, the 1<sup>st</sup> Objector avers that this application is *res judicata* for the reason that an application dated 02.12.2019 that raised similar issues was determined by a ruling dated 27<sup>th</sup> April, 2020.

**Analysis and determination**

5. I have considered the application in the light of the affidavits and submissions on record and the issue for determination is whether the grant dated 14<sup>th</sup> February, 2020 ought to be revoked.

6. Section 76 of the Law of Succession Act (*the Act*) provides as follows:

**“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.”**

7. Before this court arrived at the decision to distribute the estate the parties herein had an opportunity to tender oral evidence. The issues raised in this summons have been litigated upon by the same parties and the application by the Petitioner is more of an appeal against the determination of this court. The Applicant has not demonstrated that the what material the 1<sup>st</sup> Objector concealed from the court which has not already been litigated upon.

8. By seeking an order of revocation of the grant, I understand the Applicant to ask this court to take a different view from the previous decision by this court concerning the distribution of deceased's estate.

9. This court cannot sit on appeal on its own judgement. The Applicant has a right to challenge the determination of this court in the proper forum, instead of improperly and impermissibly re-litigating on matters that have already been determined.

10. Before I conclude, I wish to point out that I have observed that this summons is supported by the applicant's affidavit which is word for word with his affidavit in support of an application for review of same date. The Applicant no doubt is engaging in filing multiplicity of actions based on the same issues and is abusing the court process.

11. As was held by the Court of Appeal in **Muchanga Investments Limited vs. Safaris Unlimited (Africa) Ltd & 2 Others Civil Appeal No. 25 of 2002 [2009] KLR 229:**

**“The term abuse of court process has the same meaning as abuse of judicial process. The employment of judicial process is regarded as an abuse when a party uses the judicial process to the irritation and annoyance of his opponent and the efficient and effective administration of justice. It is a term generally applied to a proceeding, which is wanting in *bona fides* and is frivolous, vexatious or oppressive. The term abuse of process has an element of malice in it...The concept of abuse of judicial process is imprecise, it implies circumstances and situations of infinite variety and conditions. Its one feature is the improper use of the judicial powers by a party in litigation to interfere with the administration of justice.**

12. In the end, I find that the summons for revocation dated 15<sup>th</sup> September, 2020 is wanting in *bona fides*, is frivolous, vexatious and an abuse of the court process. The summons is hence dismissed with costs to the Respondents.

**DATED AT MERU THIS 04TH DAY OF NOVEMBER 2021**

**T. W. CHERERE**

**JUDGE**

<b>Court Assistant</b>	- <b>Morris Kinoti</b>
<b>Applicant</b>	- <b>Present</b>
<b>For Applicant</b>	- <b>N/A for Kobia Michubu &amp; Co. Advocates</b>
<b>For Objectors</b>	- <b>N/A for B.G.Kariuki &amp; Co. Advocates</b>