



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MACHAKOS**

**P&A CAUSE NO.688 OF 2008**

**IN THE MATTER OF THE ESTATE OF PETER MULWA NZWII (DECEASED)**

**FLORENCE NDUKU MAUNDU (now deceased ).....1<sup>ST</sup> PETITIONER/RESPONDENT**

**DAVID MUTWIWA MUTHEMBWA (now deceased.....2<sup>ND</sup> PETITIONER/RESPONDENT**

**VERSUS**

**REDEMPTEE MWIKALI MUISYO.....1<sup>ST</sup> OBJECTOR/APPLICANT**

**FREDRICK NZWII MBANDO.....2<sup>ND</sup> OBJECTOR/APPLICANT**

**RULING**

1. The Objectors herein filed a summons for revocation of grant dated 22/07/2009 on the ground *inter alia*; that the proceedings to obtain the grant was defective in substance; that the grant was obtained fraudulently by making of a false statement and concealment of a material fact from the court; that the grant was obtained by means of untrue facts essential in point of law.
2. The application was supported by the affidavit of the 1<sup>st</sup> objector Redempter Mwikali Muisyo who deponed *inter alia*; that she was the lawful widow of the deceased having officially married the deceased at A.I.C. Church Ziwani on 31/08/1996 and was issued with a certificate of marriage; that the Petitioners are strangers to the estate who failed to disclose the existence of the lawful dependants of the deceased and as such the grant should be revoked and issued to the objectors who are wife and father to the deceased respectively.
3. The 1<sup>st</sup> Petitioner filed a replying affidavit dated 13/10/2009 in which she deponed *inter alia*; that she had cohabited with the deceased in 1992 leading to the birth of a male child but they later parted ways in 1996 whereupon the deceased married the 1<sup>st</sup> objector; that the deceased and 1<sup>st</sup> Objector parted ways in 1997 and that she and the deceased re-united in 1999; that the deceased had nominated her and two sons as next of kin; that she single handedly catered for the deceased's medical bills all the way to the funeral expenses yet the 1<sup>st</sup> Objector is only interested in the deceased's benefits to the detriment of the children.
4. The 2<sup>nd</sup> Petitioner herein David Mutwiwa Muthembwa filed an affidavit sworn on 27/05/2016 in which he deponed *inter alia*; that he had been duped by the 1<sup>st</sup> Petitioner to act as a joint administrator and to masquerade as a son to the deceased; that the grant was obtained fraudulently by making of a false statement and by concealment of a material fact from the court; that he seeks to disassociate himself from the petition and that he be discharged from being a co-petitioner as he innocently fell victim of the 1<sup>st</sup> Petitioner's fraudulent intentions and machinations.
5. Directions were taken before Dulu J – that the summons for revocation of grant be canvassed via viva voce evidence. The two objectors presented their evidence but did not conclude their case so as to pave way for the Petitioners case. The court record indicates that parties took some time to resume to the further hearing and at one time the cause was dismissed for want of prosecution. The cause was reinstated vide a ruling dated 27/10/2016 by Ogola – J. I took over this matter on the 21/09/2017 and after several mentions directions were taken on 7/02/2019 to the effect that the summons for revocation of grant be canvassed by way of written submissions.
6. It is only the Objectors counsel who filed submissions dated 19/03/2019.
7. I have considered the summons for revocation of grant dated 22/07/2009 together with the rival affidavits as well as the submissions. It is not in dispute that both Petitioners are now deceased and that there has been no substitution of the said deceased administrators. It is also not in dispute that the two administrators had filed replying affidavits to the application for revocation of grant. The issue for determination is whether the Applicants have presented sufficient reasons justifying the revocation of the grant.

8. Revocation of grants is provided for under Section 76 of the Law of Succession Act 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) .....*

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

9. Looking at the 1<sup>st</sup> Objector's affidavit viz a viz that of the Petitioners herein it is clear that the conduct of the Petitioners while instituting the petition for grant of letters leaves a lot to be desired. It is noted that the petitioners deliberately omitted the names of the objectors as dependants and survivors of the deceased. Indeed the 1<sup>st</sup> Objector was the legally married wife to the deceased while the 2<sup>nd</sup> Objector was father to the deceased. The 1<sup>st</sup> Petitioner in her replying affidavit admitted the fact that the deceased had lawfully married the 1<sup>st</sup> Objector through a church wedding but claimed that the two parted ways before she got hitched to the deceased. The 1<sup>st</sup> Petitioner did not present evidence that the marriage between the 1<sup>st</sup> Objector and deceased was dissolved vide a divorce decree. None was produced. The 1<sup>st</sup> Objector produced a certificate of marriage confirming that she was the legitimate wife to the deceased and that she ought to have been listed as a dependant plus her children. Hence the proceedings to obtain the grant appears to have been defective in substance and that the same was obtained fraudulently by the making of a false statement as well as obtaining the same by means of an untrue allegation of facts. It seems the first Petitioner was out to lock out the 1<sup>st</sup> Objector's as she saw her to be a competitor over the benefits due to the deceased from his employer. Her cover seems to have been blown by the co-petitioner herein who later swore an affidavit dated 27/05/2016 where he confirmed that the grant had been obtained fraudulently by making of a false statement and concealment of material facts in that he had been enlisted by the 1<sup>st</sup> Petitioner to act as a son to the deceased so as to enable her obtain letters of administration intestate. The 2<sup>nd</sup> Petitioner's conscience seems to have been pricked afterwards and he decided to spill the beans by exposing the 1<sup>st</sup> Petitioner's underhand deals. The 2<sup>nd</sup> Petitioner maintained that he had fallen victim of the 1<sup>st</sup> Petitioner's fraudulent intentions and machinations and he now seeks to be disassociated from the petition and discharged from being a co-administrator. With the revelations of the 2<sup>nd</sup> Petitioner, I need not dig any further regarding the manner the grant was obtained but to find that the filing of the petition reeked of fraudulent intentions on the part of the Petitioners. The affidavit of the 1<sup>st</sup> Objector and the 2<sup>nd</sup> Petitioner leaves no doubt that the process of obtaining the grant was flawed and defective and which warrants an order for revocation or annulment. Again it transpired that the 1<sup>st</sup> Petitioner sometimes in March 2015 died while the 2<sup>nd</sup> Petitioner died on 6/08/2017. Hence there are no administrators to the estate of the deceased. This state of affairs leads me to come to the conclusion that the grant has become useless and inoperative through the demise of the Petitioners. So far there has been no substitution and this does not bode well with the estate as there is need to have it managed properly for the benefit of the beneficiaries. I find the Objectors suitable to be appointed administrators of the estate by virtue of being surviving spouse and father to the deceased respectively as they have proved their case on balance of probabilities.

10. In the result the Objector's application dated 22/07/2009 has merit. The same is allowed in the following terms:-

***(a) The grant made to the petitioners herein on 17/02/2009 is hereby revoked.***

***(b) The Objectors herein REDEMPTEE MWIKALI MUISYO and FREDRICK NZWII MBONDO are hereby appointed as administrators of the estate. A fresh grant be issued in their names.***

***(c) The new Administrators are directed to file summons for confirmation of the fresh grant within 45 days from the date hereof.***

***(d) There be no order as to costs.***

It is so ordered.

**Dated and delivered at Machakos this 21<sup>st</sup> day of January, 2020.**

**D. K. Kemei**

**Judge**