



**REPUBLIC OF KENYA**

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

**PROBATE & ADMINISTRATION NO.92 OF 2015**

**IN THE MATTER OF THE ESTATE OF:**

**COSMA OGOMBE.....DECEASED**

**BETWEEN**

**WILFRED WANDERA WERE.....PETITIONER/RESPONDENT**

**AND**

**LEONARD OTUBA SANYA.....OBJECTOR/APPLICANT**

**RULING**

1. The objector/applicant herein moved the court by way of summons for revocation or annulment of grant dated 8<sup>th</sup> March 2018 under Rule 44(1) of Probate and Succession Rules. He is seeking the following orders:

- a) That the grant of letters of administration issued to Wilfred Wandera Were on 24<sup>th</sup> September 2015 and confirmed on 28<sup>th</sup> July 2016 be annulled.
- b) That the entries in the register in respect of parcel number SAMIA/BUDONGO/99 incidental and consequential to the aforementioned grant be revoked.

2. The application is premised on the following grounds:

- a) That the proceedings to obtain the grant were defective as not all beneficiaries consented;
- b) That the grant was made fraudulently by making a false statement or by concealment from court of material issues;
- c) Uttering of untrue allegations; and
- d) The petitioner failed to inform the court the existence of Nairobi Succession cause No. 684 of 1996 in respect of the estate of Cosma Ogombe.

3. The application was opposed on ground that it is misconceived.

4. On the 23<sup>rd</sup> September 2019, the parties informed the court they had agreed to dispose of the application by way of written submissions. Both parties complied.

5. Upon my perusal of the submissions, and the replying affidavit as well as the record, the following facts emerge:

- a) That there was a succession cause in Nairobi being succession cause No. 684 of 1996 in respect of the estate of Cosma Ogombe.
- b) In this succession cause, the estate in issue is that of Cosma Ogombe who is the same deceased in Nairobi succession cause No. 684 of 1996.

At the inception of this succession cause, the petitioner concealed this fact to the court. The petitioner herein did not have to file a parallel

succession cause. The application therefore satisfies section 76 of the Law of Succession Act. It provides:

**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 order or allow; 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.**

6. From the foregoing, the grant herein is annulled, and the parties given 30 days within which to make the necessary application in Nairobi succession cause No. 684 of 1996 to have this file merged with that earlier one. At the expiry of the said period, this file will automatically be marked as closed.

7. Since the petitioner acted mischievously, he will meet the costs of this application.

**DELIVERED and SIGNED at BUSIA this 4<sup>th</sup> day of February, 2020**

**KIARIE WAWERU KIARIE**

**JUDGE**