



**REPUBLIC OF KENYA**

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

**PROBATE & ADMINISTRATION NO. 224 OF 2015**

**IN THE ESTATE OF: STEPHEN OUMA OJIAMBO.....DECEASED**

**BETWEEN**

**CLEMENTINA ANYANGO WERE.....APPLICANT**

**AND**

**ALOYS WERE AJARI.....RESPONDENT**

**RULING**

1. After this matter was confirmed on 15<sup>th</sup> February 2017, **Clementina Anyango Ojiambo**, the applicant herein filed an application for revocation of the grant dated 7<sup>th</sup> June 2017. It is premised on the following grounds:

- a) That the grant was obtained fraudulently by concealment from court material facts.
- b) That the proceedings to obtain the grant were defective in substance.

2. The application was opposed on the following grounds:

- a) That parcel of land SAMIA/LUANDA-MUDOMA/625 was assigned to the mother of the respondent.
- b) That courts have adjudicated over this matter and the verdicts given have not been overturned.

3. I have perused the affidavits of both parties, the attached documents and the record. The following facts have emerged:

- a) That the deceased herein was polygamous.
- b) That he was survived by several heirs other than the respondent.

The respondent in form P. & A. 5 indicated that he was the only person who survived the deceased. This was concealment of a material fact. This offends section 76 (b) of the Law of Succession Act which 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—**

**(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;**

The issues the respondent was raising about the other beneficiaries having benefited ought to have been addressed at the distribution stage.

4. I have considered that there are decisions herein pertaining to the property of the deceased. These decisions can only be appreciated at the appropriate time.

5. The application is allowed and the grant revoked. The applicant and the respondent herein are appointed co-administrators.

**DELIVERED and SIGNED at BUSIA this 3<sup>rd</sup> day of December, 2019**

**KIARIE WAWERU KIARIE**

**JUDGE**