



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

PROBATE & ADMINISTRATION NO. 20 OF 2000

IN THE ESTATE OF WABWIRE WANZALA.....DECEASED

BETWEEN

EGESA WABWIRE WANZALA.....APPLICANT/OBJECTOR

AND

ANGELIMO MAKOKHA ABONDO

BENARD PETER ODIPO.....RESPONDENTS

RULING

1. **EGESA WABWIRE WANZALA**, the applicant/ objector herein filed an application dated 5th January 2015 for revocation and annulment of the grant issued herein under Rule 44(1) of the Probate and Administration Rules. It is premised on the following grounds:

- a) That the grant was obtained fraudulently by making a false statement or by concealment of material facts.
- b) That the grant was obtained by means of untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation made in ignorance or inadvertently.

2. The application was opposed by the petitioners/respondents.

3. I have perused the affidavits of both parties. The following facts have emerged:

- a) That the late **WABWIRE WANZALA**, was the registered proprietor of land parcel number **BUKHAYO/MALANGA/123**
- b) That the applicant was the son of the late **WABWIRE WANZALA**.
- c) That the petitioners/respondents had left the applicant out in the list of beneficiaries.
- d) That the petitioners/respondents thereafter filed a suit to evict the applicant from his father's land.

4. Section 76 of the Law of succession provides inter alia 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;

5. Rule 44 (1) of Probate and Administration Rules provides for the form of the application.

6. I therefore find that the application is merited. The grant to the respondents is annulled and the petitioner is hereby issued with a grant. If the respondents want to stake any claim in the estate, they may do so as objectors.

7. The costs of this application to the applicant.

DELIVERED and SIGNED at BUSIA this 8th day of May, 2018

KIARIE WAWERU KIARIE

JUDGE