



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 107 OF 2009**

**IN THE MATTER OF THE ESTATE OF NDUKUSU EMEKILENG – DECEASED**

**LUCAS BARASA.....OBJECTOR/APPLICANT**

**VERSUS**

**JOSHUA KIDI MEKILENGI}**

**EMMANUEL AMEKILENGI NDUKURU}.....PETITIONERS/RESPONDENTS**

**R U L I N G**

1. The application herein dated 3/5/2016 seeks to revoke the grant dated 8/5/2014 on the grounds that the same was obtained fraudulently by concealment of material facts. It is supported by the affidavit of Lucas Barasa dated 3/5/2016. In the said affidavit he has deposed that the grant was confirmed without his knowledge and that some of the beneficiaries have been left out.

2. The beneficiaries left out are;

- 1. Yakobet Atenge – daughter**
- 2. Priscilla Naliaka – daughter**
- 3. Joseph Omukule – grandson.**

3. He has deposed that the acreages of Elina Mojongit has been reduced by 0.5 acres instead of 1 acre and Joshua Kidi Mekilengi from 15 acres to 14 acres.

4. The Applicant has equally attached a copy of a map which he said that they had agreed as a family to share the suit property.

5. I have perused the pleadings herein. The Respondents were served on 10/5/2018 with the hearing notice but they declined to sign the notice.

6. I have perused carefully the said application and I am inclined to dismiss it for the following reasons.

In the first instance, there is no evidence to suggest that the Applicant was never aware of this proceedings. My above conclusion is fortified by the fact that his signatures are contained in the following documents which are already on record.

- a) The P&A 5 dated 3/7/2008.**
- b) Form 38 and**
- c) Form 37 filed on 9/7/2012.**

7. Nowhere in his supporting affidavit has he mentioned that he did not sign the same or at worst to suggest that his signature was forged.

8. The grant was confirmed on 8/5/2014 and he was given 17.5 acres. Apart from his non of the 28 people enumerated in the said grant have raised any complaints. I doubt whether 29 people would not know that successions proceedings are taking place over the deceased estate.

9. Moreover the persons he has mentioned in his affidavit paragraph 4 and 5 have not filed any affidavit in support of this application or at worst filed their respective objection to suggest that they were denied land or that their acreages were reduced.

10. Although their ages were not mentioned, my reasonable conclusion is that they are adults who could have filed their own independent objections. Even if they wanted to ride on the applicant's objection they ought to have filed some affidavits in support.

11. Finally, looking at the affidavit of service dated 28/5/2018 and filed on the same date, there is nothing to suggest that the application herein was ever served upon the respondents. All that they refused to receive was a hearing notice.

12. In the premises I find that almost 5 years on the line it cannot be true that the applicant was not seized of this matter. Looking at the distribution list, the applicant still possess the lion share of the estate.

13. The application is inordinately late. The same does not contain sufficient reasons to suggest that there was fraud or concealment of any material particulars by the respondents.

14. The application is hereby dismissed with no orders as to costs.

**Delivered, signed and dated at Kitale this 17<sup>th</sup> day of July, 2018.**

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**H.K. CHEMITEI**

**JUDGE**

**17/7/18**

**In the presence of:**

**Arunga for Objector**

**Emmanuel Ndukuru – 2<sup>nd</sup> Respondent**

**Kirong – Court Assistant**

**Ruling read in open court**