



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

PROBATE & ADMINISTRATION NO. 412 OF 2012

IN THE ESTATE OF:-

MELITUS WANYAMA AGUNDA.....DECEASED

BETWEEN

1. MILDRED AGUNDA

2. CHRISTINE AGUNDA.....APPLICANTS/OBJECTORS

AND

1. JOHN KHAKHUNDU AGUNDA

2. RODRICK KHAKHUNDU AGUNDA

3. WESLEY NASIO AGUNDA.....PETITIONERS/RESPONDENTS

RULING

1. MILDRED AGUNDA and CHRISTINE AGUNDA, the applicants herein filed an application dated 10th August 2016 for revocation of the grant issued herein on 21st May 2013. The application was brought under section 78 of the Law of Succession Act, Cap. 160 Laws of Kenya. It is premised on the following grounds:

- a) That the grant was issued on the basis of false affidavit that all beneficiaries had consented.
- b) That the current administrators have further procured a false affidavit for confirmation of the grant.
- c) That the current administrators have not accounted for rent proceeds from the Buru-Buru house of the deceased.
- d) That the intended distribution of the estate is illegal and inequitable.

2. The application was opposed by the respondents on the following grounds:

- a) That all beneficiaries, including the applicants, consented to the mode of distribution.
- b) That the contention by the applicants that their signatures were forged is not true.

3. The applicants cited an inapplicable section of the law. Section 78 of the Law of Succession Act provides as follows:

For the purposes of this Act, a duplicate of any grant sealed with the seal of a court or other authority in a Commonwealth or foreign country, or a copy thereof certified as correct by, or duly on behalf of, that court or authority, shall have the same effect as the original.

The revocation of grants is provided for under section 76 of the Law of Succession Act.

4. In the matter of the **Estate of Murathe Mwaria -deceased Nairobi HCCC NO.875/2005]** Koome J summarised the grounds for revocation of a grant under Section 76 of the Law of Succession Act as follows:-

i. when the procedure followed in obtaining the grant is defective in substance.

ii. when the grant is obtained fraudulently by making a false statement.

iii. making an untrue allegation of fact essential in point of law to justify the grant.

iv. or when the person who has the grant has failed to proceed diligently with the administration of the estate.

5. I have perused the affidavits of both parties and two issues emerge. One, that the petitioners/respondents have not accounted for the rent of the Buru-Buru house rent and two, that the petitioners forged the signatures of the applicants to give an impression that they had signed.

6. The applicants have not proved on a balance of probabilities that the respondents have not been diligent in the administration of the estate.

7. An allegation of forgery is a serious one and requires to be responded to adequately. Rodrick Khakhudu Agunda who allegedly took the document for consent to the applicants did not swear an affidavit to clarify the issue. When I compared the signatures of the applicants in the application and the ones appended to the consent and alleged to be theirs, I find that they are different and one does not need to be an expert to notice so. On this ground I will allow the revocation of the grant. Each party to meet own costs.

DELIVERED and SIGNED at BUSIA this 17th day of July, 2018

KIARIE WAWERU KIARIE

JUDGE