



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT HOMA BAY**

**MISC. SUCCESSION CAUSE NO.5 OF 2013**

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

**MICHAEL GEORGE TENDWA SAID.....DECEASED**

**AND**

**ROSE EVERLINE TENDWA..1<sup>ST</sup> PETITIONER/RESPONDENT**

**VERSUS**

**YUDA KENGERA TENDWA.....2<sup>ND</sup> PETITIONER/APPLICANT**

**PAUL TENDWA SAID LULE.... 3<sup>RD</sup> PETITIONER/APPLICANT**

**RULING**

[1] Grant of Letters of Administration Intestate was herein issued on the 15<sup>th</sup> December 2003 respecting the Estate of the late Michael George Tendwa Said (deceased) in favour of **Yuda Kengera Tendwa, George Arnold Said and Pius Felix George Said** for purposes of administering the said estate comprising of four parcels of land Viz: **Kanyada/Kotieno-Katuma'B'/302, Kanyada/Kotieno -Katuma'B'/297, Kanyadier Adjudication/41 and Plot No.Site & Service Scheme 93.**

Also to be administered was the deceased's Barclays Bank Account No.4589217.

[2] However, on the 22<sup>nd</sup> February 2013, the first administrator **Yuda Kengera Tendwa**, took out summons for revocation of grant and filed them in court on 13<sup>th</sup> March 2013. As at that time the second and third administrators i.e. **George Arnold Said and Pius Felix George said** had passed on hence the inclusion of the second administrator's son, **Paul Lule Tendwa** and the third administrator's widow, **Rose Everline Tendwa** as applicants/objectors in the summons.

This court differently constituted, considered the summons and revoked the grant in a ruling dated **22<sup>nd</sup> May 2014**. In so doing, the court ordered that a new grant be issued to anybody who may apply. The court record does not show that any fresh application for grant of letters of Administration Intestate was made by anybody. Instead, the applicants/objectors in the aforementioned summons for revocation of grant purported to take out summons for confirmation of grant on 17<sup>th</sup> March 2016, these were filed in court on 26<sup>th</sup> April 2016, together with the supporting affidavit of **Yuda Kengera Tendwa** containing a schedule of distribution of the estate property.

[3] The summons for confirmation of grant came up for hearing in court on 17<sup>th</sup> May 2016, and the parties were given an opportunity by the court to sit down and address the issue relating to land parcel No.297 and in the process involve the area chief.

The matter was thereafter mentioned on 13<sup>th</sup> September 2016, when the applicants' counsel on record, **MR. G.S. OKOTH**, ceased acting for the applicants who were then given up to 5<sup>th</sup> October 2016, to instruct another advocate. On that date, the matter was taken out of the hearing list and was later listed for direction on 14<sup>th</sup> December 2016, when the court fixed it for hearing on 14<sup>th</sup> February 2017, on which date the applicant/objector, **Rose Everline Tendwa**, was directed to file an affidavit of protest with regard to the distribution of parcel No.297. The court however, proceeded to order a partial distribution of the estate as proposed in the schedule dated 17<sup>th</sup> March 2016. The matter was then rescheduled to 4<sup>th</sup> April 2017, when it was further rescheduled to 15<sup>th</sup>

May 2017, when it was taken out of the hearing list and counsel for the first and second applicant **Mr. Ogutu Mboya**, was directed to file a formal application for deposit in court of the estate's rental income pending the hearing and determination of the matter.

**[4]** On 26<sup>th</sup> June 2017, was mentioned for directions but was re-scheduled to 4<sup>th</sup> September 2017 and then to 25<sup>th</sup> September 2017 and further to 7<sup>th</sup> January 2018, when it was re-scheduled to 19<sup>th</sup> January 2018 and then to 9<sup>th</sup> April 2018, for hearing of the application dated 23<sup>rd</sup> May 2017 by the second and third applicants for conservation and/or presentation of the estate.

On that 9<sup>th</sup> April 2018, the court directed that the application be canvassed by way of written submissions and be mentioned on 4<sup>th</sup> July 2018, on which date the first petitioner(respondent) appeared through the learned counsel, **Mr. Obach** but not the second and third petitioners/applicants. It was confirmed that all the parties had filed their written submissions. Accordingly, the matter was slated for 12<sup>th</sup> June 2018 (today) for ruling on the application for preservation of the estate dated 23<sup>rd</sup> May 2017.

**[5]** However, being a court of record, this court perused the entire record in the matter and noted with sadness and sympathy that the proceedings stretching from the 26<sup>th</sup> July 2016 to 4<sup>th</sup> July 2018, were an exercise in futility as the parties in taking out and attempting to prosecute the summons for confirmation of grant dated 17<sup>th</sup> March 2016, acted on the basis of the grant of letters of administration issued on 15<sup>th</sup> December 2003, which grant was revoked by the court on 22<sup>nd</sup> May 2014 without anybody or any party applying for a fresh grant in terms of the orders made by the court.

As it were, this matter with effect from 26<sup>th</sup> July 2016, proceeded on the “**pretext**”, that a fresh grant had been issued to the purported first, second and third petitioners.

**[6]** In the circumstances, this court cannot purport to render a ruling based on a defective application which was presented and argued in proceedings which were defective and a clear demonstration of abuse of court process by all the purported petitioners.

In sum, there is no grant to be administered by anybody and confirmed by the court. Indeed, there is currently nothing to conserve and/or preserve.

This means that the estate of the deceased remains the property of the deceased unavailable for distribution until such time that a fresh grant of letters of administration intestate shall be issued to any party and confirmed by the court. The grant initially issued on 15<sup>th</sup> December 2003, was lawfully revoked and remains invalid for the purposes of administration of the estate herein. Any proceedings or applications arising from that grant after its revocation on 22<sup>nd</sup> May 2014 was null and void “**ab-initio**”.

**J.R. KARANJAH**

**JUDGE**

**12.07.2018**

**[Read and signed this 12<sup>th</sup> day of July, 2018.]**

(In the presence of Mr. Obach for 1<sup>st</sup> Petitioner and Mr. Olando for 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners]