



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 25 OF 2014**

**IN THE MATTER OF THE ESTATE OF RINGERA KIMUTAI ALIAS M'RINGERA KIMUTUA (DECEASED)**

**LUCY KINANU MWORIA**

**KENNETH KITHINJI JOHN**

**ALEXANDER MWITL.....PETITIONERS**

**-VS-**

**PATRICK KITHINJI.....OBJECTOR**

**R U L I N G**

1. This ruling relates to the summons dated 17<sup>th</sup> April, 2018 brought under **Section 76, 55 and 82 of the Law of Succession Act and Rule, ("the Act"), Rule 44(1) of Probate and Administration Rules and Section 68 of the Land Registration Act No. 3 of 2012**. The applicant seeks orders for the revocation of the grant issued to the petitioners on 24<sup>th</sup> April, 2014 and the cancellation of titles to **L.R. Nos. NTIMA/IGOKI/9395, 9396, 9367 and 9398** and for the same to revert to **L.R. NO. NTIMA/IGOKI/790**.

2. The grounds upon which the application is grounded are contained in the body of the application as well as the supporting affidavit of Patrick Kithinji sworn on 15<sup>th</sup> March 2018. These were that the grant was obtained fraudulently by making a false statement and the proceedings were defective. It was contended that the Cause was filed with forged signatures; that Mary Kathure, Julius Kimathi and Joseph Kimathi who died prior to 2014 were shown to have signed the consent to lodge the petition; that the objector was never informed of the matter and his signature was likewise forged. He further stated that he neither signed the consent for distribution nor was he aware of the date of the confirmation.

3. The matter was canvassed by way of oral submissions. Mr. Mwirigi for the applicant submitted that the applicant is a grandson of the deceased as are the rest. That he was disinherited and his share given to Phillip Kiruki a purchaser. The deceased died in 1968 and Phillip could not have bought the land from the deceased. Further, that his signature to the consent was forged. On the other hand, the petitioners failed to either file a replying affidavit in opposition to the application or attend court at the hearing.

4. The issue for determination is **whether or not the grant should be revoked**. To revoke or annul a grant, the court is guided by the provisions of **Section 76 of the Act** which stipulate the grounds on which a grant may be revoked or annulled. That provision provides in the relevant part 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;***

***(d) ...***

***(e) ..."***

5. The applicant alleged that the proceedings to obtain the grant were defective. It was obtained fraudulently through false statements. That the petitioners presented **Form 38** which showed that he together with other beneficiaries who had died prior to 2014 had signed it. He averred that that was false and the signatures were a forgery. These averments were neither denied nor challenged.

6. **Section 55 of the Act** provides:-

*“(1) No grant of representation, whether or not limited in its terms, shall confer power to distribute any capital assets, or to make any division of property, unless and until the grant has been confirmed as provided in section 71.*

*“(2) The restriction on distribution under subsection (1) does not apply to the distribution or application before the grant of representation is confirmed of any income arising from the estate and received after the date of death whether the income arises in respect of a period wholly or partly before or after the date of death.”*

6. From the record, the petitioners gave Philip Kiruki a purchaser ¼ acre of the estate before confirmation and indeed made the court distribute to him that portion as if he was one of the beneficiaries. He was a stranger to the estate. By doing so, they not only contravened the law but also aided him to evade paying tax on the purchase and transfer of that portion to hi. That is an illegality. Purchasers of estate property should pay stamp duty to the government. They should not be assisted by administrators from paying their right share of tax.

7. Accordingly, I find that the application is meritorious and it is hereby allowed. I make the following orders:-

a) the grant of letters of administration issued to the petitioners on 24<sup>th</sup> April, 2014 and confirmed on 21<sup>st</sup> April, 2015 is hereby revoked.

b) the titles issued in relation to subdivision of **L.R. NO. NTIMA/IGOKI/790**, which are **L.R. NO. NTIMA/IGOKI/9395, 9396, 9397 and 9398**, are hereby cancelled and reverted to **L.R. NO. NTIMA/IGOKI/790** and in the name of the deceased.

c) a fresh grant hereby issues to **Patrick Kithinji** and leave is hereby granted to him to apply for confirmation before expiry of six months.

d) Although this is a family matter, for the reason of the fraudulent acts on the part of the petitioners, they must be made to understand that wrongs do not pay. They have to suffer the pain of costs. They are to bear the objectors costs of the application.

It is so ordered.

**DATED** and **DELIVERED** at Meru this 1<sup>st</sup> day of November, 2018.

**A. MABEYA**

**JUDGE**