



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

SUCCESSION CAUSE NO. 276 OF 2013

**IN THE MATTER OF THE ESTATE OF THE LATE WILFRIDA OKUTO OPIYO
(DECEASED)**

AND

**IN THE MATTER OF APPLICATION FOR REVOCATION OF GRANT BY
KONSOLATA GOKO ATIENO APPLICANT/OBJECTOR**

AND

WILFRIDA OPIYO KIROWA RESPONDENT/PETITIONER

RULING

Having heard the evidence of both parties I am persuaded that the application for revocation of the grant issued to the Respondent has merit. This is because the grant was obtained fraudulently. The Respondent did not seek the consent of her sister in-law – the applicant in this case yet they are persons of equal priority. Indeed she did not list the applicant's name and those of her children as survivors of the deceased in Form P & A 5 whose requirement is mandatory. Instead and with intend to defraud she listed the name of the applicant's husband who according to her died while the petition was on-going. She did not however inform the Court of his demise but instead proceeded to obtain confirmation of the grant as if there were no other persons surviving the deceased. Not even her children were listed as beneficiaries yet she told this Court that she has children. The rules require that the consent to the confirmation of grant and also the mode of distribution be obtained from all beneficiaries. The same is in form of writing and is filed together with the application for confirmation. By omitting to do so the respondent's application both for letters of administration and for confirmation of grant was rendered defective not to mention that it amounts to concealment of facts which were material.

The application/summons for revocation has merit and accordingly this Court makes orders as follows:-

1. That the grant and the subsequent Certificate of Confirmation issued to the respondent is hereby revoked.
2. That, a fresh grant of letters of administration shall issue to the applicant and the respondent jointly.
3. That the said grant shall be confirmed within three (3) months of this ruling.
4. That for the avoidance of doubt the title deed issued to the Respondent is hereby revoked and the same shall be deposited in Court within fourteen (14) days of this ruling.

5. The asset Kisumu/West Sidho/130 shall revert to the name of the deceased.

6. The Respondent shall bear the costs of this application.

Signed, dated and delivered at Kisumu this 9th day of March 2017

E. N. MAINA

JUDGE

In the presence of:-

Mr. Odeny for the Applicant/Objector

Respondent in person

Court Assistant – Serah Sidera

INTERPRETATION: English/Dholuo