



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KAKAMEGA**  
**Succession Cause No.111 Of 1989**  
**IN THE MATTER OF A K O – DECEASED**  
**AND**  
**J O K .....PETITIONER/RESPONDENT**  
**VERSUS**  
**J M O .....APPLICANT**  
**R U L I N G**

**Introduction**

1. The deceased herein A K O died intestate on the 6<sup>th</sup> June 1983 at Kakamega. Letters of Administration were issued to the Petitioner J OK herein on the 12<sup>th</sup> January 1990 and confirmed on the 18<sup>th</sup> of June 1990.

**The Application**

2. By an application dated the 9<sup>th</sup> day of October 2012 the applicant J M O sought for revocation or annulment of the grant of letters of administration made on the 12<sup>th</sup> day of January 1990 on the grounds that the petitioner lied to the Court that he was the only survivor/beneficiary of the estate of the deceased. Further that he did not disclose that there were other beneficiaries amongst them the applicant herein and her husband D O who was mentally ill. That the petitioner did not disclose the full extent of the estate of the deceased.

3. Lastly that the grant was obtained fraudulently and/or on the basis of untrue statements of facts made to the Court. The application is supported by applicants own affidavit wherein she reiterates the grounds herein above stated and adds that the petitioner did not disclose to the Court that the deceased was survived by the applicant, the applicant's husband, H A , A O and G A . Further that the deceased's other properties namely SOUTH MARAGOLI/[particulars withheld], SOUTH MARAGOLI/[particulars withheld] and SOUTH MARAGOLI/[particulars withheld] were not disclosed. She claims that the petitioner lied to the Court when he stated that he was entitled to inherit land parcel SOUTH MARAGOLI/[particulars withheld] which share was due to the applicant's husband D O. That he obtained title to SOUTH MARAGOLI [particulars withheld] and has now settled his son upon it.

4. The applicant claims to have discovered the fraud in 2009 when the petitioner constructed a house for his son on the land. She approached the Provincial Administration for help who advised her to pursue the claim through the Land Disputes Tribunal. The Tribunal later awarded her the land. She claims the

execution of the tribunal award was frustrated after the Petitioner filed Judicial Review application No.50 of 2009. She contends that the petitioner's registration of the land parcel having been a fraud no valid title can be transferred save through these proceedings.

5. The applicant also claims that the deceased was her father in law and she was his dependant together with her husband D O who is deceased by omitting some of the deceased's properties from the deceased's estate.

### **The Response**

6. The application is opposed through the replying affidavit sworn by J O K on 24<sup>th</sup> July, 2015. The deponent denies that the applicant's late husband was mentally retarded. He asserts that he purchased land parcel No. Maragoli/[particulars withheld] from the deceased before the deceased died and that the said parcel of land does not therefore form part of the deceased's estate. He also states that the findings of Vihiga Land Dipsutes Tribunal were overturned by the High Court of Kakamega in Judicial Review No.50 of 2009. That the judgment of the High Court in the Judicial Review case was not intended to frustrate the award to the applicant as the court found that the award was a nullity.

7. The Respondent also denied committing any fraud and averred that the Land in question was his and that infact the deceased had settled all his sons on their respective parcels before he (deceased) died. He also contended that the applicant was aware of the succession matter as far back as 2009 and her claim was determined and further that under the Law of Succession Act Section 30 the applicants claim has expired since she did not lodge her claim within the prescribed time.

### **Issues for Determination**

8. From the foregoing and after carefully considering the pleadings together with the rival submissions the following issues arise for determination:-

1. Whether the applicants claim has expired as provided under the Law of Succession Act.
2. Whether this Court should grant the orders sought by the applicant.

9. On the first issue the petitioner claims that the applicants claim has expired since she did not lodge her claim within the prescribed time for her interest to be determined. The petitioner has relied on Section 30 of the Law of Succession Act Cap 160. Section 30- LIMITATION OF TIME- states;- "***No application under this part shall be brought after a grant of representation in respect of the estate to which the application refers has been confirmed by Section 71***" This part refers to Part III that deals with PROVISIONS FOR DEPENDANTS and it comprises Sections 26 – 30 of the Law of Succession Act. Therefore according to the Section no application under Section 26 should be brought after the grant in the cause in respect of the subject estate has been confirmed as provided under Section 71.

10. The conclusion to draw from the above is that the applicant is not barred by Section 30 of the Law of Succession Act from bringing the application herein. An application for revocation and/or annulment of grant is premised under Section 76 of the Law of Succession Act Cap 160 Laws of Kenya. It provides as follows "***A grant of representation whether or not confirmed may at any time be revoked or annulled if the Court decides on application by any interested party or of its own motion.....***" The words "at any time" do not in my considered view limit when revocation or annulment can be applied for. The applicant therefore is within time to file or apply for revocation and/or annulment of the grant herein.

11. On the second issue the parties have filed their affidavits in support of their claim. The petitioner claims to be the owner of L.R No.South Maragoli/[particulars withheld] , saying he purchased the same from deceased. He has not shown any sale agreement or anything to that effect confirming that he truly purchased the same. The certificate of search or record shows that the said parcel belonged to A K the deceased herein see exhibit "JMO – 3" to applicant's affidavit. The petitioner was apparently given the said parcel after the confirmation of grant on 18/06/1990. See exhibit "JMO 2", but there is no consent

filed nor is there a letter from the Chief to show the dependants of the deceased herein. The petitioner has not denied the applicants claims and as such they remain to be true. The forms filed herein show that Petitioner did not disclose the assets of the deceased's in total but only mentioned L.R. No.SouthMaragoli/[particulars withheld] . Having not disclosed all the beneficiaries and the full extent of the deceased's estate, the petitioner therefore obtained the grant fraudulently by the making of a false statement and concealment of material facts to the case.

12. For the reasons set out above this Court finds the application dated 9<sup>th</sup> October 2012 to have merit and the same is granted as prayed.

Accordingly, the grant of Letters of Administration intestate made to the petitioner on 12<sup>th</sup> January, 1990 and confirmed on 18<sup>th</sup> June, 1990 be and is hereby revoked. A fresh form P & A 41 shall issue in the joint names of the Petitioner and the applicant. Thereafter, the two of them, either jointly or separately shall apply for confirmation of grant within 60 days of the issuance of the fresh grant. If there is not agreement as to who should apply for confirmation they shall each file and indicate, the mode of distribution for determination by the court.

13. It is so ordered

Ruling delivered, dated and signed in open court at Kakamega this 11th day of February 2016

**RUTH N. SITATI**

**JUDGE**

In the presence of:-

Mr. Museiga (absent) for the Applicant

Mr. Ondieki h/b for Mr. Athunga for Petitioner/Respondent

Mr. Lagat - Court Assistant