

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

SUCCESSION CAUSE NO. 686'B' OF 2010

IN THE MATTER OF THE ESTATE OF RICHARD OTIENO WAMARE – DECEASED

AND

EZEKIEL OCHIENG' OTIENO APPLICANT

VERSUS

MILLICENT AKOTH RESPONDENT

RULING

The deceased to whose estate these proceedings relate is Richard Otieno Wamare who died, intestate, on 13th August 2010. Letters of Administration were issued to Millicent Akoth Otieno in her capacity as his wife. That grant is not dated. Subsequently Ezekiel Ochieng Otieno the applicant in this application and who is named as a beneficiary in this cause filed Miscellaneous Succession Cause No. 941 of 2015 and obtained a grant ad litem in the guise that he intended to file on behalf of the estate a suit under the Law Reform Act and the Fatal Accidents Act. The grant issued to him is dated 24th September 2015 and was limited for a period of three months.

On 16th October 2015 Ezekiel Ochieng Otieno filed this summons for revocation of the grant issued to Millicent Akoth and for orders to restrain her from having any dealings in regard to the asset comprising the estate. The grounds for the application are that the grant was obtained fraudulently by means of false allegation and concealment of material facts; that the proceedings obtaining the grant were defective in substance and that the beneficiaries and dependants were not informed of the mode of distribution and were disinherited and further that the Administratrix has failed to diligently administer the estate.

When the applicant went to serve the hearing notice for the summons upon the Advocate for the Administratrix the Advocate received the notice under protest and indicated that the Administratrix is deceased. He even attached a copy of the burial permit. The applicant did confirm to this Court that the administratrix who was his step mother is now deceased. That being the case and the Respondent having been a sole administratrix and she having not distributed the estate the grant has become useless and inoperative and there is reason to revoke it. The same is accordingly revoked. The grant ad litem issued to the applicant in Succession Cause No. 941 of 2015 is also revoked as he could not lawfully have been issued with a grant ad litem when a full grant had already been issued to Millicent Akoth Otieno. There shall be liberty to apply for letters of administration afresh. The Deputy Registrar to extract this order and have it served upon the three houses of the deceased through the Assistant Chief of the area the estate is situate. It is so ordered.

Signed, dated and delivered at Kisumu this 6th day of October 2016

E. N. MAINA

JUDGE

In the presence of:-

Applicant in person

N/A for Respondent

CC: Serah