



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

SUCCESSION CAUSE NO. 126 OF 2006

CHARLES MICHIRA MOGOI.....PETITIONER

AND

PAURINA NYABOKE MOGOI.....OBJECTOR

RULING

1. Through Summons for Revocation of grant dated 6th March, 2016 and brought under **Section 16 Law of Succession Act**, the Objector herein PAURINA NYABOKE MOGOI, sought the revocation of the grant issued to the petitioner herein on 22nd September 2006 and confirmed on 4th July 2008. The said application was premised on the grounds that:

1. The grant was obtained fraudulently by the making of a false statement or by the concealment from court of something material to the case.

2. 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.

3. The person to whom the grant was made has failed, after due notice and without reasonable cause

i. To proceed diligently with the administration of the estate.

ii. To produce to the court within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83.

2. The application was also supported by the applicant's affidavit dated 6th March 2016 in which she states that the petitioner concealed the names of 5 other beneficiaries to the estate and did not disclose that the deceased also had other property known as **N. Nyaribari cache B/B/Boburia/73**.

3. The applicant also depones that the petitioner is not the eldest son of the deceased as he had alleged and that the applicant, by virtue of the fact that she is a daughter in law to the deceased, ranks higher in priority to the petitioner.

4. It is the applicant's case that the deceased estate, comprising of **Land Parcel No. Nyaribari Cache/Keumbu/1157** has since the confirmation of grant been subdivided into 20 parcels of land to wit, **Nyaribari Cache/Keumbu/3645, 3646, 3647, 3648, 3649, 3650, 3651, 3652, 3653, 3654, 3655, 3656, 3657, 3658, 3659, 3660, 3661, 3662 and 3663** (hereinafter referred to as the "suit land parcels") all

registered in the name of the petitioner while title **No. Nyaribari Chache/Keumbu/1158** has since been transferred to one Darius Nyangwara Mogoi.

5. The petitioner/respondent did not file any replying affidavit to the application despite having been duly served with the said application and therefore the application stands unopposed.

6. I have considered the summons for revocation of grant and the affidavit in its support. I am satisfied that the said application has merit and I allow it as prayed. Consequently, I make orders as follows:

a. The grant issued to the petitioner on 22nd September 2006 and confirmed on 4th July 2008 is hereby revoked and in its place, a fresh grant is issued in the joint names of the petitioner and the applicant/Objector.

b. Land parcel No. Nyaribari Chache/Keumbu/1158 and the rest of the suit land parcels shall revert back to the name of the deceased to await distribution to the deserving beneficiaries.

c. The parties herein are at liberty to make a joint application for confirmation of grant or alternatively, one party makes the said application with the other party filing an affidavit of protest.

d. Each party shall bear his or her own costs of this application.

Dated, signed and delivered in open court this 6th day of December, 2016

HON. W. A OKWANY

JUDGE

In the presence of:

- N/A for the Objector
- N/A for the Respondent
- Omwoyo: court clerk