



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 893 OF 2013

IN THE MATTER OF THE ESTATE OF MWANZA MULI (DECEASED)

LOISE SYOMITI MWANZA APPLICANT

VERSUS

JUMA MWANZA RESPONDENT

RULING

1. Letters of administration intestate in respect of the Estate of **MWANZA MULI** (deceased) were granted to **JUMA MWANZA** on the **1st November, 2011** by Kitui Principal Magistrate's Court presided over by A. G. Kibiru Principal Magistrate. A certificate of confirmation of the grant thereof was issued on **3rd October, 2012**.
2. By way of an application dated 5th November, 2013 **Loise Syomiti Mwanzia**, the Applicant seeks revocation and/or annulment of the grant issued. The application is premised on grounds that: The grant was obtained fraudulently by the making of a false statement and concealment from court something material in respect of the Estate; It was obtained by means of an untrue allegation of fact notwithstanding that the allegation was made in ignorance or inadvertently; The Applicant being a widow of the deceased and the Respondent being a step son, she had a prior right to a grant of representation in the cause and had not consented nor renounced her right to apply for a grant nor was she issued with a citation to renounce her such right; The Applicant is entitled to an equal share with her co-wife of all the Estate of the deceased; The Applicant did not consent to the distribution of the Estate in the mode proposed by the Respondent and was not given a chance to propose the intended distribution.
3. In an affidavit in support of the application the Applicant depones that the deceased, her husband was survived by herself, her co-wife and mother to Respondent, **Kaindi Mwanza** and several children. The deceased not only left land parcel number **Kisasi/Mbitini/118**. His other assets were land parcel Nos.
 - **Kisasi/Ngiluni/610.**
 - **Kisasi/Ngiluni/601.**
 - **Kisasi/Ngiluni/617.**
 - **Kisasi/Mbitini/1118.**
4. When the Applicant learnt of the Succession Cause the Respondent filed, she filed a caveat dated 24th October, 2011 and a notice of objection. When the matter came up for confirmation of the grant it was indicated that she had consented but she had not.

5. Further she averred that the Respondent was not capable of faithfully administering the Estate of the deceased in accordance with the Law as demonstrated by the way the Estate was distributed. He took 5.3 Ha while his mother got 1.7 Ha. The Applicant got 1.6 Ha. The Estate was not distributed equally. No provision was made for other beneficiaries. Instead of obtaining a letter from the Chief of Ngiluni where the deceased was resident, the Respondent obtained a letter from the Chief Mbitini Location who did not know the beneficiaries of the deceased.
6. The Respondent filed grounds of opposition stating that the Applicant was given a share designated to her by the deceased; the grant was confirmed according to the wishes of the deceased; the Applicant consented to the confirmed grant but later changed her mind due to the desire to sell part of the deceased's Estate.
7. The application was canvassed by way of written submissions that I have duly considered.
8. **Section 76 of the Law of Succession Act** provides:

“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. **that the person to whom the grant was made has failed, after due notice and without reasonable cause either –**
 - i. **to apply confirmation of the grant within one year from the date thereof, or such longer period as the court has ordered or allowed; or**
 - ii. **to proceed diligently with the administration of the estate; or 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 or has produced any such inventory or account which is false in any material particular; or**
 - e. **that the grant has become useless and inoperative through subsequent circumstances.”**
9. A perusal of an affidavit in support of the Petition for letters of administration (Form P & A 57) indicates that the deceased was survived by **Kavili Kimande (a wife)**. The Applicant's name is omitted. The only asset indicated as having been left by the deceased is **Mulango/Wikiliye/40**. The estimated value was given as **Kshs.100,000/=**. The applicant was not one of the beneficiaries who signed the consent to making of the grant. Her name was omitted from the list of beneficiaries indicated as having survived the deceased at the time of confirmation of the grant. The sole property indicated as having formed the Estate of the deceased was distributed to **Elizabeth Mwikali Maluki**.
 10. It is not denied that the Applicant was the deceased's mother. It is also not denied that the deceased had other assets that were not included in the Succession Cause. It is also not denied that some beneficiaries were left out and were not included in the distribution of the Estate. They were **Stephen Muli Mwanza, Makili Mwanza, Taabu Mwanza, Damaris Mwanza, Daina Mwanza and Esther Mwanza**.
 11. It is evident that the grant was obtained following concealment of some material facts in the cause from the court. Allegations of the facts presented to court were also untrue. Had all facts been brought to the attention of the court the end result of the distribution done may have been different. This being the case it calls for revocation of the grant.
 12. In the result I hereby revoke the confirmed grant in Kitui Succession Cause No. 92 of 2011.
 13. The Applicant will have costs of the application.
 14. It is so ordered.

DATED, SIGNED and DELIVERED at MACHAKOS this 6TH day of MAY, 2015.

L.N. MUTENDE

JUDGE