



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 189 OF 2001

IN THE MATTER OF THE ESTATE OF THE LATE MAKALI NZIOKA (DECEASED)

CHRISTINE KALONDU MAKAU PETITIONER/RESPONDENT

VERSUS

1. **TERESIA KALEKYE KITONGA**
2. **KAMENE MAKAU**
3. **NDINDA MAKAU**

INTERESTED PARTIES

R U L I N G

1. The **summons for revocation** dated 4/9/2009 seeks the following orders:-
 - i. **“(Spent)**
 - ii. **THAT pending the hearing hereof an order do issue against the Petitioner/Respondent preventing her from meddling, disposing and/or alienating any movable and immovable property belonging to the estate of the deceased.**
 - iii. **THAT the grant of Letters of Administration (intestate) made to the Petitioner/Respondent by this Honourable Court in this cause on the 8th day of August 2001 and confirmed on 31st May 2002 be revoked and/or rectified to reflect all the beneficiaries.**
 - iv. **THAT costs of this application be provided for.”**
2. The application is supported by the affidavit of **Teresia Kalekye Kitonga** sworn on 4/9/2009. However the said **Teresia Kalekye Kitonga** has since passed on and was on 29/2/12 substituted by her son **Alfred Ngao Kitonga**.
3. According to the affidavit in support, the Respondent failed to disclose the other beneficiaries/survivors to the court when she petitioned the court for Letters of Administration. The other beneficiaries/survivors are named as follows:-
 - **“Kamene Makau – Daughter in law – adult**
 - **Ndunda Makau – Daughter – adult – married**
 - **Grace Makau – Daughter –(deceased) – adult – married**
 - **Christine Kalondu Makau – Daughter – adult – married”**

The Applicant has described herself as a widow of the late Kitonga Makau who was a son to the deceased, Martha Mule Makau with whom they were blessed with four children namely:-

- v. **Ngao Kitonga**
- v. **Kyalo Kitonga**
- v. **Mueni Kitonga**

v. **Mbithi Kitonga**

4. The Respondent in opposition to the application swore a replying affidavit on 13/4/2010. It is denied that the 1st Applicant was a daughter in law to the deceased, **Makau Nzioka**. It is also denied that the 1st Applicant bore children to the son of the deceased, **Martha Mule Makau** and that the 2nd and 3rd Applicant did not object to the confirmation of the grant.
5. On the date the application was fixed for hearing, the parties opted to proceed by way of written submissions. The Applicants' submissions were filed but the Respondent's submissions were not filed although they were aware of the hearing date.
6. I have considered the application, the reply to the same and the submissions filed. The affidavit in support of the petition for Letters of Administration (**Form P & A 5**) in paragraph No. 4 disclosed the name of the Respondent as the only survivor. Although the letter from the chief reflected four names of people who survived the deceased, the consent of the other beneficiaries/survivors was also not obtained prior to court being petitioned. Part of the court proceedings on the date the grant was confirmed are missing from the court record. It is therefore not possible to ascertain from the record if the 2nd and 3rd Applicant consented to the distribution of the estate of the deceased.
7. It is therefore clear that the grant was obtained fraudulently due to the concealment of material facts. Whether the 1st Applicant and her children are beneficiaries to the estate of the deceased can only be resolved by way of evidence. The application is allowed. Costs in cause.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 6th day of March 2014.

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B. THURANIRA JADEN

JUDGE