



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
SUCCESSION CAUSE NO. 438 OF 2011
IN THE MATTER OF THE ESTATE OF THE LATE MARGARET MARY KATUA
(DECEASED)

- 1. JOHN OSCAR KATUA**
- 2. JOHN KYENDE KATUA**
- 3. GILBERT MAKAU KATUA.....PETITIONERS/RESPONDENTS**

VERSUS

- 1. BEATRICE NJERI IRUNGU**
- 2. ZAKAYO KIMANI MAINA.....OBJECTORS/APPLICANTS**

R U L I N G

1. The **Notice of Objection** was filed herein on 8/8/2012 under **sections 68 (1) and 72 (a)** of the **Law of Succession Act Cap 160 Laws of Kenya, Rule 44 of Probate and Administration Rules** by **Beatrice Njeri Irungu & Zakayo Kimani Maina**.

2. The Applicants' claim according to their affidavit in support is that they had purchased land parcels No. LR 13418/133 and LR No. 13418/134 from the deceased prior to her death in the year 2003. The Applicants' complaint is that they were not included in the Probate & Administration form 5.

3. No papers were filed in opposition to the application and there was no attendance in court by the administrators of the estate of the deceased although service was duly effected.

4. Under **section 67** of the **Law of Succession Act Cap 160 Laws of Kenya (Act)** when an application for a grant of representation is made, notice of the same must be published for a period of not less than 30 days. The only exception made by this provision is for applications for limited grants for collection and preservation of assets.

5. **Section 68** of the **Act** provides for the making of any objections to an application for a grant of representation.

6. The grant of letters of administration was made herein on 7/11/2011. The Objector's are therefore trying to close the door after the horse has already bolted.

7. No application for the confirmation of the grant has been made by the administrators as provided for under **section 71** of the **Act**. **Section 72** of the **Act** provides for making protests to the confirmation of grant. The reliance by the Applicants on **section 72** of the **Act** is therefore a premature bid.

8. Section 76 of the **Act** provides for the revocation or annulment of a grant when the proceedings to obtain the grant were defective in substance; the grant was obtained fraudulently by the making of false statements or by concealment of material facts to the court; the grant was obtained by the untrue allegations of fact or the administrators have failed to apply for the confirmation of the grant within the period provided or failed to proceed diligently with the administration of the estate.

9. If the Applicants' intention herein was to apply for the revocation or annulment of the grant under **section 76** of the **Act**, it was mandatory to comply with the provisions of **rule 44** of the **Probate and Administration Rules**.

10. The application at hand is an omnibus that seems to have combined the objection to the making of a grant with an application for revocation or annulment of grant. Consequently, I find the application incompetent and I strike out the same. 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