



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KAKAMEGA**  
**SUCCESSION CAUSE NO. 496 OF 1999**  
**IN THE MATTER OF THE ESTATE OF MAUNDE MAUNGO (DECEASED)**

**BETWEEN**

GETRUDE NASIROLI SIKUKU - ADMINISTRATOR/RESPONDENT

VERSUS

WAWIRE MAUNDE WANJALA ..... OBJECTOR/APPLICANT

**R U L I N G**

Before me is an application for revocation of grant dated 10th June 2013 brought by Wawire Maunde Wanjala through his counsel P. M. Masheti & company. The application was filed under Section 47 and 76 of the Law of Succession Act (Cap 160) as well as rule 44 and 73 of the Probate and Administration Rules. The application has six prayers one of which has been spent as follows -

1. (spent)
2. **The grant of letters of Administration Intestate made in favour of the petitioner herein Getrude Nasiroli Sikuku be revoked and annulled and a fresh grant be issued to the applicant herein Wawire Maunde Wanjala.**
3. **That any sub-divisions and registrations made on LR No. Bunyala/Namirama/825 and any Title Deeds issued thereafter be cancelled.**
4. **That the petitioner herein, her agents, servants and all relatives be restrained from selling; alienating; and or dealing in any manner whatsoever with the estate intestate herein comprised in LR No. Bunyala/Namirama/825.**
5. **That the Government Land Surveyor do visit LR. No. Bunyala/Namirama/825 and survey the same in accordance with the original boundary features before the commencement of this cause and establish an access road to the applicant's portion and file its report in this Honourable Court.**
6. **The costs be provided for.**

The application has grounds on the face of the Summons. It was filed with a supporting affidavit sworn on 10th June 2013 by the applicant. It is deponed in the said affidavit inter alia, that the deceased was survived by three sons that is Wawire Maunde Wanjala, Wangira Maunde Hamisi, and Benjamin Shikuku Maunde. That Benjamin Shikuku Maunde died in 1999 and was survived by Getrude Nasiroli Sikuku his widow who is the petitioner herein. That Wangira Maunde Hamisi had higher priority to institute these proceedings but was not informed of the case by the petitioner for him to give consent. That the petitioner forged signatures of the surviving brothers and fraudulently sub-divided the subject land into parcels No. 1874 and 1875 and obtained title deeds thereof. That the petitioner had also closed the access road to the land.

The application is opposed. The petitioner Getrude Nasirori Sikuku filed a replying affidavit dated 26th August 2013. She stated inter alia that the objector together with Wangira Maunde Hamisi attended court on 21st October 2004 when confirmation of grant was done. That the land was divided and the petitioner got 5 acres while Wawire Maunde and Wangila Maunde got 4.75 acres each. That it was when the petitioner asked the objector to refund or contribute money for sub-division and registration of the land that he declined and brought this objection before the court.

At the hearing of the objection, Mr. Akwala appeared for the objector while Mr. Odongo appeared for the petitioner. Both counsel asked the court to give a ruling based on the documents filed.

This is an application for revocation of grant of letters of administration. This court has jurisdiction under Section 76 of the Succession Act (Cap. 160) to revoke a grant even where confirmation has been granted. The grounds on which a grant may be revoked are where the proceedings were defective in substance, where a grant was obtained fraudulently by false statement or concealing material facts; where grant was obtained using untrue allegations or facts, where the person to whom the grant was made has failed after due notice to either apply for confirmation or proceed diligently to administer the estate; or failure to produce to court any inventory or account as required by the court; or where the grant has become useless and inoperative through circumstances.

The ground upon which this application for revocation of grant is based, is fraud and failure to obtain consent of the objector and his brother. I have perused the record of the court. On 21/10/2004, the matter came before G. B. M. Kariuki, J. the court recorded as follows -

**“Petitioner – present**

**two heirs – present**

**Court to the two heirs Wawire Muinde and Wangira Muinde - Are you satisfied with the 4.5 acres share while your brother's wife the petitioner has 5 acres?**

**Wawire Muinde – Yes.**

**Wangira Muinde – I am satisfied with the distribution.”**

It is from this consent that the court confirmed the grant. The above being the case, and the fact that the record has not been challenged, I find that the allegation of fraud and forgery made by the applicant/objector herein is unfounded. From the court record, all the three were in court. They agreed that the petitioner gets 5 acres and the two brothers including the objector herein get 4.5 acres each from that land. The court did not have to make a ruling on the matter, because the parties/beneficiaries entered a consent in court. The allegation of forgery of consents is therefore a lie.

I find that the objector has not satisfied any of the statutory requirements for revocation of grant. The application for revocation of grant has to be dismissed and I dismiss the same.

As for costs, this being a family matter, I each party will bear their respective costs.

***Dated and delivered at Kakamega this 15<sup>th</sup> day of May, 2014.***

**George Dulu**

**J U D G E**