



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

SUCCESSION CAUSE NO. 139 OF 2005

IN THE MATTER OF THE ESTATE OF THE LATE MUSYIMI NZONZO- (DECEASED)

**IN THE MATTER OF AN APPLICATION FOR NULLIFICATION OF GRANT DATED AND
ISSUED ON 23RD DAY OF APRIL 2007**

1. MUTUA MUSYIMI

2. AGNES VAATI.....ADMINISTRATORS/RESPONDENTS

VERSUS

CHRISTINA NTHENYA VAATI.....PROTESTER/APPLICANT

R U L I N G

1. The application dated 8/7/2009 is brought under **section 76 of the Succession Act and Rules 44, Rules (1) (2) of the Probate and Administration Rules**. The application seeks orders that the grant of Letters of Administration dated and issued on the 23rd day of April, 2007 be annulled and all the subsequent titles thereof be recalled and annulled by this court.

2. The application is supported by the affidavit of the Applicant, **Christina Nthenya Vaati** sworn on 8/7/2009. According to the said affidavit, the Petitioners were misled by one **Arkwright Mulili Musyimi** who is their neighbour and who had purchased half an acre of their land and who is the one who guided them through the process of petitioning for the grant of Letters of Administration and gave himself double his share of the land. The Applicant's complaint is that the Death Certificate used in obtaining the grant of Letters of Administration was a forgery, that the letter from the chief excludes some of the beneficiaries to the estate, that the mode of distribution is unacceptable.

3. In opposition to the application, a replying affidavit was sworn by **Arkwright Mulili Kivulusa** on 2/10/2009. The said deponent denied any involvement in any forgery and stated that he purchased part of the estate of the deceased hence his being confirmed as a purchaser for the same and his share should therefore be left intact.

4. Section 76 of the Law of Succession Act provides as follows:-

“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.”

5. The Applicant alleges that the proceedings to obtain the grant were defective in substance that there was fraud by making of false statements or by concealment of material facts. The affidavit in support of the petition for Letters of Administration intestate only reflects two survivors/beneficiaries in the estate of the deceased. That is a son **Mutua Musyimi** and a daughter in law, **Agnes Vaati**. The letter from the chief reflects the same position. The liabilities were reflected as a half share of **LP Mumbuni/Kasinga/113** by **Arkwright Mulili Kivulusa**. However, it has now emerged that there were other beneficiaries who were not disclosed contrary to the provisions of **section 51** of the **Law of Succession Act** and **rule 7** of the **Probate and Administration Rules**. **Section 51 (2) (g)** of the **Law of Succession** stipulates as follows:-

“An application shall include information as to-

g. in cases of total or partial intestacy, the names and addresses of all surviving spouses, children, parents, brothers and sisters of the deceased, and of the children of any child of his or hers then deceased.”

6. It has also emerged that there was fraud in the obtaining of the death Certificate coupled with allegations that the purchaser ended up with double his share.

7. With the foregoing, I find merit in the application and allow the same with costs in cause.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 15th day of May 2014.

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B. THURANIRA JADEN

JUDGE