



No.308/2014

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**SUCCESSION CAUSE NO. 291 OF 2006**

IN THE MATTER OF THE ESTATE OF **MOHAMMED MAKAU (DECEASED)**

**HADIJA MOHAMMED MAKAU.....1<sup>ST</sup> PETITIONER/RESPONDENT**

**ABDUL MOHAMMED MAKAU.....2<sup>ND</sup> PETITIONER/RESPONDENT**

**FATUMA MOHAMMED MAKAU.....3<sup>RD</sup> PETITIONER/RESPONDENT**

**VERSUS**

**FARIDA OMAR MOHAMMED.....1<sup>ST</sup> RESPONDENT/APPLICANT**

**SAIDA OMAR MOHAMMED.....2<sup>ND</sup> RESPONDENT/APPLICANT**

**RULING**

1. The application dated **11<sup>th</sup> August 2008** is brought pursuant to **Section 76** of the **Law of Succession Act**, and **Rule 44(1)** of the **Probate and Administration Rules**.
2. In the application the applicant seeks an order revoking/annulling the grant obtained by the petitioners/respondents on the ground that: –
  - i. *It was obtained fraudulently, by the petitioners who made a false statement that Plot Machakos Town/ Block 11/132 Number 909/614 was part of the estate of the deceased and that the applicants were not entitled to it;*
  - ii. *The petitioners obtained the grant without notice to all persons entitled in the same degree or in priority to them as required by Rule 24 of the Probate and administration Rules;*
  - iii. *The petitioners failed to disclose to the court that the estate of the deceased was inherited by his widow, one Halima Mohamed (now deceased) and later distributed by the said widow.*
3. In an affidavit in support of the application it is deponed that the applicants were wives to **Mohammed Omar Makau, (now deceased)** a son to the deceased. After the deceased passed, on **Halima Mohammed**, his wife inherited his estate. **Halima** distributed the estate; **Machakos Town Block 11/132** formerly **Machakos Number 909/614** was given to **Mohammed Omar** and **Abdul Mohammed Makau**, the 2<sup>nd</sup> Petitioner, which they have renovated as it was dilapidated.
4. In a response thereto the respondents denying having obtained the grant fraudulently stated that they invited the applicants to discuss the mode of distribution but they declined to sign agreements.
5. They stated that the deceased's estate was never inherited. The applicant's husband had

- attempted to deprive them of the estate but never succeeded. Although the deceased was survived by three (3) sons and four (4) daughters, the applicants have been collecting rent from the estate of the deceased which comprises of only one property, **Machakos Town Block 11/132** also referred to as **L.R. No. 909/614**.
6. Further, they averred that the property was not distributed by their deceased mother and the proposed mode of distribution by the applicant was improper and unjust.
  7. The deceased herein died in **1969** prior to the **Law of Succession** coming into force. Having left no will, the law applicable would be the **Kamba customary law** or the **Islamic customary law**.
  8. It is not in dispute that the deceased was survived by three (3) sons and four (4) daughters. The husband to the applicants, one of his sons died in the year **2001**. It is evident that at the time of petitioning for Letters of Administration Intestate, although the name of **Omar Mohammed Makau** was included as a beneficiary, he was dead and those who survived him, the applicants herein were not notified of the intention to obtain Letters of Administration. This fact was concealed from them. It has also been established that there were proceedings at the **Kadhi's Court** in respect of **Plot No. 50** situated at **Machakos** said to have been an asset owned by the deceased. The case was not concluded.
  9. This per se would be evidence that the deceased may have left more properties that were not disclosed by the petitioners. This would call for revocation of the grant issued.
  10. Accordingly, I do revoke the Temporary Grant of Letters of Administration issued herein. This being a succession matter, each party shall bear their own costs.

**DATED, SIGNED and DELIVERED at MACHAKOS this 12<sup>TH</sup> day of JUNE 2014.**

**L.N. MUTENDE**

**JUDGE**