



No.321/2014

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 247 OF 2008

IN THE MATTER OF THE ESTATE OF NDAKA MAINGI (DECEASED)

MARGARET NDUKU NDAKA.....PETITIONER

VERSUS

HARRISON MULWA NDAKAOBJECTOR/APPLICANT

R U L I N G

1. The application dated **2nd August, 2012** brought by way of **Notice of Motion** is pursuant to **Section 76** of the **Law of Succession Act** and **Rule 44** of the **Probate and Administration Rules**. It seeks issuance of an order revoking/annulling a **Grant** issued to **Margaret Nduku Ndaka**.
2. The application is premised on grounds that the grant was obtained through concealment of material facts and it is in the interest of the applicant that his interests be taken into consideration.
3. The application is supported by an affidavit sworn by the applicant, **Harrison Mulwa Ndaka** whereby he avers that the petitioner obtained the grant having not disclosed all the beneficiaries of the estate of the deceased; she did not seek consent to the said letters and the signature appearing as his (applicant) is a forgery.
4. The application is unopposed.
5. A grant of Letters of Administration Intestate (grant) was issued to the respondent in respect of the estate of **Ndaka Maingi** on the **2nd September 2008**. The said Grant was confirmed on the **19th November, 2009**. According to the schedule of distribution, only two assets forming the estate of deceased namely, **Land Ndalani/Ndalani Block 1920** and **Ndalani/Ndalani Block 1/921** were to be subdivided between the respondent and one **Peter Muia Kisili**. A certificate thereof was issued.
6. It has been stated that the respondent obtained the grant having concealed some material facts and the applicant's signature was forged.
7. A consent to making of the Grant of Administration Intestate to a person of equal or lesser priority was duly signed by three (3) people;-
 - i. **Harrison Mulwa Ndaka**
 - ii. **Wambua Ndaka**
 - iii. **Nzuki Ndalla**
8. It is alleged by the applicant that his signature was forged. There is no evidence to controvert the allegation. The applicant must be believed when he makes that assertion.

9. It has been stated that there was non-disclosure of beneficiaries of the estate of the deceased. A letter written by the **Chief Tala Location (annexture "HMNI")** gives more than 22 names of people who survived the deceased. It also discloses the fact that the deceased was married to three (3) wives and not one wife as the respondent made the court to believe.
10. According to **Section 76 of the Law of Succession Act**. Concealment of material facts as in the instant case and making a false statement is a ground for revocation of a grant. In the premises the application is allowed and I make orders as hereunder:-
 - i. The Grant of Letters of Administration issued on the **19th November, 2009** be and is hereby revoked.
 - ii. The Registrar of Lands be and is hereby directed to cancel title deeds if any, issued subsequent to the confirmation of the Grant
 - iii. The Respondent shall bear costs of the application.

DATED, SIGNED and DELIVERED at MACHAKOS this 12TH day of JUNE 2014.

L.N. MUTENDE

JUDGE