

REPUBLIC OF KENYA

High Court at Mombasa

Succession Cause 39 of 2009

IN THE MATTER OF THE ESTATE OF URBANUS MANESA MULI (DECEASED)

AND

MARGARET MWONGELI MANESA (also known as MWONGELI PETER MUTUA.....
PETITIONER

RULING

Before court is the chamber summons dated 5th November, 2009 and filed in court on instant date brought under certificate of urgency seeking the revocation of the Grant of letters of Administration issued in respect of the estate of **URBANUS MANESA MULI** and issued to **MARGARET MWONGELI MANESA alias MARGARET PETER MUTUA** on 19th August, 2009. The respondent is the widow of the deceased and together they had four (4) children who are still minors. The application has been brought by the mother of the deceased **TERESIA KAMENE MULI** who argues that the applicant failed to include her as one of the dependants of the deceased and therefore a beneficiary of his estate. The applicant further argues that the respondent listed as one of the deceased's assets **PLOT NO. 2586/II/MN** which plot was acquired after the death of the deceased and therefore cannot be said to form a part of his estate. **MR. JENGO** Advocate represented the respondent whilst **MR. MATHEKA** appeared for the applicant. The application was argued by way of written submissions which were duly filed as agreed by 18th November, 2010 and the ruling was reserved for 20th December, 2010.

I have given careful consideration to the written submissions made by both counsel as well as the annexures thereto. The orders which the applicant seeks are orders of revocation of a Grant of letters of Administration issued by the High Court in Mombasa. This is clearly a succession matter. In this country succession matters are guided by **The law of Succession Act Cap 160 Laws of Kenya**. This application is stated to have been brought under section 76 of the Succession Act, Rule 44 of the Probate and Administration Rules and order XXVI of the Civil Procedure Rules. This despite the fact that Rule 63 of the Probate and Administration Rules clearly provides that the Civil Procedure Act and Rules, except Order V, X, XI, XV, XVIII, XXV, XLIV and XLV are not applicable in succession matters. The injunction sought is provided for by Order XXXIX of the Civil Procedure Rules which do not apply. As such this application as filed is defective.

The procedure for such an application for revocation of grant can only be properly brought by way of a **summons for revocation or annulment of grant** as set out in rule 44 of the Probate and Administration Rules. The applicant did not comply with Rule 44. The application supported by a "*supporting affidavit*" as opposed to an "*Affidavit for revocation or annulment of Grant*" as provided by form 14 of the Probate and Administration Rules. I have considered the cited case of **In the Estate of PAUL ANDOLE LUBABE (Deceased) 2005 eKLR2**, in which my learned brother Hon. Justice G.B.M. Kariuki handled a similar application. I am persuaded by this decision and find that this application is incompetent and is therefore not properly before court. The application is fatally defective in both substance and form. As such I do hereby strike out the same. No orders as to costs.

Dated and delivered in Mombasa this 8th day of May, 2013

M. ODERO

JUDGE

In the presence of:

No Appearance by either party

Court Clerk Mutisya