



REPUBLIC OF KENYA

High Court at Nakuru

Succession Cause 590 of 2009

REBECCA A. AUKA.....1ST APPLICANT/OBJECTOR

WILLIAM MAKAU KADIMA.....2ND APPLICANT/OBJECTOR

VERSUS

MARGARET KAVAYA KADIMA.....PETITIONER/RESPONDENT

RULING

Rebecca A. Auka, the 1st applicant and William Makau Kadima the 2nd applicant have brought the instant Summons for revocation or annulment of grant dated 4th March, 2010 seeking, among other orders, that the grant of letters of administration issued to the respondent, Margaret Kavaya Kadima, on 28th day of July, 2010 in Nakuru High Court Succession Cause No. 490 of 2009, be revoked.

The application is supported by the affidavits of the applicants and is premised on the ground that the respondent obtained the grant fraudulently (by none disclosure of the 1st applicant's interest in the estate of the deceased); that some of the properties included in the grant are not part of the estate of the deceased; and that the properties listed in the grant do not form the entire estate of the deceased.

Oposing the application, the respondent has sworn an affidavit denying that she obtained the grant fraudulently or with an intention to disinherit the applicants. She also deposed that before the death of the deceased she had never met the 1st applicant and her siblings; that after the burial of the deceased the 1st applicant and her siblings turned hostile and refused to cooperate with her.

I have considered the arguments by the applicants and those by the respondent, the submissions together with the authorities cited.

The sole issue for determination is whether the applicants have made up a case to warrant the granting of the orders sought.

Under **Section 76** of the **Law of Succession Act, Chapter 160 Laws of Kenya**; a grant of representation, whether or not confirmed, may at any time be revoked or annulled if:

“a) the proceedings to obtain the grant were defective in substance;

b) 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) the grant was obtained by means of untrue allegation of a fact essential in point of law to justify

the grant notwithstanding that the allegation was made in ignorance or inadvertently;

d) the person to whom the grant was made has failed after due notice and without reasonable cause either:-

(i) to apply for confirmation of grant within one year from the date thereof, or such longer period as the court has ordered or allowed; or

(ii) to proceed diligently with the administration of the estate; or

(iii) to produce to the court within the time prescribed, any such inventory or account of administration is required by the provisions of paragraphs (e) and (g) of section 83 or as produced any such inventory or account which is false in any material particular; or

(e) the grant has become useless and inoperative through subsequent circumstances.”

In the instant application, it is contended that the respondent obtained the grant by fraud; that she deliberately failed to disclose to the court that the deceased had other dependants. It is also alleged that she included, as part of the estate of the deceased a property that did not belong to the deceased and finally that she deliberately failed to account for a property that belonged to the deceased, namely Nakuru Institute of Medical Science and Management.

From the averments of the respondent I am satisfied that *prima facie*, the respondent, at the time of applying for the grant, knew that the deceased had children with another wife. The respondent in her own affidavit, has indicated that she knew of the applicants' interest in the deceased estate. She has, for instance, in paragraph 10 of her affidavit stated that the applicants were the barriers to her application for letters of application. In the light of the foregoing, I find and hold that she deliberately failed to disclose the existence of the first applicant and her siblings to the court. The respondent has also failed to explain why South Wanga/1999 is included in the list of the assets of the deceased, yet from the annexures it appears to belong to the estate of the deceased person's mother. On the other hand the applicants have not furnished any evidence that Nakuru Institute of Medical Sciences and Management belonged to the deceased.

For the foregoing reasons, the application has merit. The grant issued to Margaret Kavaya Kadima on 28th July, 2010 is revoked.

Dated, Signed and Delivered at Nakuru this 7th day of November, 2012.

**W. OUKO
JUDGE**