



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Succession Cause 493 of 2004

IN THE MATTER OF THE ESTATE OF THE LATE AYUB IKUMU KABUKU

(DECEASED)

JOSEPH KARANJA IKUMU.....1<sup>ST</sup> APPLICANT

JAMES MUKANDA IKUMU.....2<sup>ND</sup> APPLICANT

VERSUS

LUCY WAMBUI IKUMU.....RESPONDENT

RULING

The applicants applied for revocation of the grant of letters of administration made on 12th January, 2005 to the respondent on the ground that the respondent had obtained the grant through deceit, fraud and misrepresentation. The first applicant swore an affidavit in support of the said application and deposed that following the death of the deceased, the parties herein made a joint application for letters of administration and *colligenda bona* for purposes of obtaining from the National Bank of Kenya some documents belonging to the deceased which were in the bank's safe custody. The application was granted but thereafter she became hostile to the applicants and it became difficult to petition for letters of administration together.

The applicants cited her in Succession Cause Number 179 of 2004 and she instructed Miss Njoroge and filed a notice of appointment of advocate for her but thereafter she did not apply for a grant under rule 22 of the Probate and Administration Rules. The applicants then applied for letters of administration in Succession Cause Number 401 of 2004 and a grant of letters of administration was issued to the applicants in that cause on 27th October, 2004.

However, the respondent filed a different Succession Cause No. 493 of 2004. That was outside the 15 days period as provided for under the rules. In her petition, she falsely stated that all the parties who had interest in the estate of the deceased had consented to the filing of the petition. She did not disclose the existence of any other matter. Only 3 people signed form P&A 38 and not the 11 who ought to have signed the same. In the earlier grant obtained by the applicants, the respondent is named as a beneficiary of the estate.

In her replying affidavit, the respondent stated that the respondents colluded with the area chief and made it impossible for her to obtain a letter to state that she was the deceased's only living widow and that had led her to filing an application for exemption from producing the chief's letter. She admitted that she was aware that the applicants had filed another petition but stated that she tried to enter into dialogue with her step sons but they became uncooperative and so she decided to apply for another grant and cited all the deceased's children as beneficiaries.

However, the respondent did not make any application to revoke the letters of administration issued in Succession Cause Number 401 of 2004 which had been issued much earlier than the grant made to the respondent in Succession Cause No. 493 of 2004.

There cannot be two valid grants issued to different people in the same Succession Cause in respect of the

estate of the same deceased person.

In the circumstances of this matter and in light of the contents of the respondent's relying affidavit sworn on 11th April, 2005, I am satisfied that the respondent obtained the grant issued to her on 12th January, 2005 through deceit and fraud and the same must be revoked which I hereby do.

The respondent shall bear the costs of this application.

DATED, SIGNED & DELIVERED at Nakuru this 5th day of July, 2005.

**D. MUSINGA**

**JUDGE**

**5/7/2005**