



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 344 OF 2015**

**IN THE MATTER OF THE ESTATE OF THE LATE MUSWII MAUNDU YUMBYA –  
(DECEASED)**

AND

IN THE MATTER OF;

**SIMON MUNYASYA MUSWII.....PETITIONER**

AND

**AUGUSTUS KISILU MWIKYA.....1<sup>ST</sup> OBJECTOR/APPLICANT**

**BENJAMIN MUTUA IVITA.....2<sup>ND</sup> OBJECTOR/APPLICANT**

**RULING OF THE COURT**

1. The Summons for Revocation or Annulment of Grant herein is dated **26<sup>th</sup> August, 2016**. It prays for the following orders;

a. That this application be certified as urgent and service of the same be dispensed with first instance.

b. That pending the hearing and determination of this summons for revocation or annulment of grant there be a suspension of use of the confirmed grant issued at Machakos on the 27<sup>th</sup> day of April 2016 to prevent any dealings in the estate of the late **Muswii Maundu Yumbya**.

b. That pending the hearing and determination of this summons for revocation or annulment of grant the Makeni Land Registrar be restrained and/or prohibited from registering any transfers in relation to parcels of land namely **Ukia/Utaati/1624 and Ukia/Utaati/1625**.

c. That the grant of letters of administration intestate made to **Simon Munyasya Muswii** on the **27<sup>th</sup> day of April, 2016** and confirmed by the court be revoked and/or annulled.

d. Costs of this application be in the cause.

2. The Summons are founded on the grounds set out therein and is supported by affidavit of **Augustus Kisilu Mwikya** sworn on **26<sup>th</sup> August, 2016** and a similar affidavit by **Benjamin Mutua Ivita** sworn on the said date. The applicant's case is that a grant of letters of administration intestate of the estate of **Muswii Maundu** (deceased) had been made to **Simon Munyasya Muswii** by this court and subsequently

confirmed on the **27<sup>th</sup> day of April, 2016**. The appellant's case is that the list of properties which belonged to the estate of **Muswii Maundu** were listed in the schedule and among the properties listed was the parcel of land known as **Ukia/Utaati/1625**, to which the applicant is the registered proprietor, and he has a title deed to the same. The petitioner herein went ahead and filed this Succession Cause in which he listed the said property **Ukia/Utaati/1625** as one of the properties which belong to the estate of **Muswii Maundu**, the deceased herein, thereby concealing vital information from this court in that the said parcel of land does not form part of the estate of the late **Muswii Maundu**. The applicant's case is that this is a ground for revocation or annulment of the confirmed grant issued on the **27<sup>th</sup> day of April, 2016**. The applicant is apprehensive that since the said property has been listed in the schedule of distribution of assets in the said estate of **Muswii Maundu** and a Certificate of Confirmation of Grant issued to that effect, the Petitioner/Respondent herein may cause the said parcel of land to be registered in his name or cause a transfer of the said parcel of land to third parties. The applicant therefore prays for the said orders.

2. The application was served for hearing on **15<sup>th</sup> November, 2016**. The Petitioner was served but declined to sign the notice of service. An affidavit of service is filed herein on **1<sup>5th</sup> November, 2016** to the effect.

3. Since the application is not opposed, the duty of this court is to confirm whether or not the case for the applicant is merited.

4. I have looked at the schedule of the confirmed grant and have noted that plot No. **Ukia/Utaati/1625** is declared as part of the estate of the deceased, and is wholly allocated to the Petitioner. Yet, I have also looked at annexure ARM2 which is a copy of title deed to the said plot. It is in the name of the **1<sup>st</sup> Objector**. Therefore, the Objector has raised a *prima facie* case, which in the absence of a response from the Petitioner, this court must consider.

5. I am satisfied that the application is merited and I allow the application in the following terms;

a. That the grant of letters of administration intestate made to **Simon Munyasya Muswii** on the **27<sup>th</sup> day of April, 2016** and confirmed by the court be and is hereby revoked. Consequently, the Makueni Land Registrar is hereby restrained and prohibited from registering any transfers in relation of land namely **Ukia/Utaati/1624** and **Ukia/Utaati/1625** pursuant to above revoked grant.

b. Costs herein shall be paid by the Petitioner.

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**E.K.O. OGOLA**

**JUDGE**

**DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 23<sup>RD</sup> DAY OF FEBRUARY, 2017**

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**DAVID KEMEI**

**JUDGE**

**In the presence of:**

Muumbi – for Nthiwa for Applicant