



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**SUCCESSION CAUSE NO. 2725 OF 2013**  
**IN THE MATTER OF THE ESTATE OF JOSEPH KITOLE SOLAI (DECEASED)**

**ANN NAISULA KITULE.....APPLICANT/OBJECTOR**

**VERSUS**

**JOYCE WAMBUI MEDUKENYA....RESPONDENT/ADMINISTRATOR**

**RULING**

1. On the 15<sup>th</sup> of July 2014 the applicant / objector filed an application dated the 15<sup>h</sup> of July 2014. The application is brought under Section 18 and 76 of the Law of Succession Act Rules 44 & 73 of the Probate & Administration Rules Chapter 160 laws of Kenya. The applicant is seeking the following orders;

- i. That the Court revokes the alleged Last will and Testament purported to have been legally and/or lawfully executed by the deceased Joseph Kitole Solai bequeathing his entire estate to the respondent/ administrator herein on the 23<sup>rd</sup> May 2012.
- ii. That the court revokes the grant of letters of administration illegally and / or wrongfully or unlawfully obtained and/or issued on the 23<sup>rd</sup> January 2014 to the Respondent/ Administrator to disclose and/or deliberately concealing material facts from the court.
- iii. That the court grants the applicant/ objector any other and/ or further orders it deems fit and just to grant.

2. In the applicant's affidavit filed in support of the application depones as follows; she is the daughter of the deceased Joseph Kitole Solai who died intestate on the 17<sup>th</sup> April 2013; that the deceased was married to her late mother Philipina Samba Kitule and that he was the sole owner of L.R. Kajiado/Kaputiei/22630 and Kajiado/ Kaputiei-North 15054 which properties he constructed rental houses. That the respondent/ administrator fraudulently obtained a Will purporting that the same had been executed by her late father on the 22<sup>nd</sup> of May 2012 bequeathing her father's estate to her. That the said Will and Testament is purported to have been witnessed by Sospeter Mwanzene Mwazumbi who has since denied the signature therein as he never signed the said Will. That the respondent came to court an obtained the grant of letters of administration unlawfully, illegally or irregularly appointing herself as the sole administrator.

3. That the respondent has since kicked her and her sister Sabina Kina Kitule out of their father's land and left them homeless and also denied them financial support from the rent she is collecting from the rental houses of her late father's properties yet they are the beneficiaries. That the respondent intends to unlawfully and or illegally dispose of her father's estate thus making her and her sister suffer loss and

damages.

4. That upon learning that the respondent was about to dispose of their father's estate they moved to the Environmental and Land Division. The court ruling made it clear that the respondent was a stranger to her father's estate but had a claim against Gideon Lorkenyoke Nareiyo alias Gideon Olorkinyoki Olelo Nareiyo ( deceased) who died intestate on the 2<sup>nd</sup> March 1993 her husband. As a consequence the ELC Court issued orders restraining the responded and her agents or servants from collecting rent from the houses erected on Kajiado/Kaputiei/ 210630 and Kajiado /Kaputiei- North 15054 pending the hearing and the determination of the suit. That the respondent is the petitioner in Succession Cause No. 1598 of 2010 of her late husband and that she was the third wife.

5. That the respondent deliberately failed and /or intentionally concealed the said information to the court, unlawfully forged the Will and Testament purporting that the same had been executed in her favour by her late father, hence the orders sought by the applicant.

6.The respondent did not file any response to the applicant's application. The matter preceded by way of viva voce evidence. 3 witnesses testified. PW1 Ann Naisula Kitule she testified that she is the daughter of the deceased and has a sibling called Sabina. That the administrator Joyce went to their home to assist them when their father was sick. Plot 15054 and 22630 are her father's plot. Her father did not remarry after the mother died in 2016. Her father did not leave a Will neither was Joyce the administrator left any property by her father. Joyce had a husband who died and she filed a succession cause for his estate in succession cause 1598 of 2010. PW2 Gideon Kwangi Lasolai testified that the deceased Joseph Kitole Solai was his first born brother and used to stay at Isinya. He had a wife called Philipia who died in 2006 and left 2 children Ann and Sabina Kitole. His brother did not remarry. He knows Joyce who was a tenant of the deceased. He was not a wife of the deceased. They later saw a Will but they did not know where it was written. Joyce claimed that she was given the property by the deceased. Ann is married. Sabina has five children. Joyce has the title deed but she has no right over the property. Sabina stays in a place that is rented and he pays the rent. PW3 was Joshua N. Makope a chief at Kisaju area he testified that he has been a chief for 25 years and knows the deceased Joseph Kitole as a neighbour and resident of the place. Joseph's shamba is close to his. Joseph's wife died in 2006 and did not remarry due to his illness he sold part of his shamba. He does not know Joyce Wambui. He admitted writing the letter dated 12<sup>th</sup> July 2013.

7. Joyce Wambui did not respond to the application for revocation. The objector filed written submissions dated 27<sup>th</sup> March 2014. In the said submission the applicant reiterates the evidence adduced and submitted further that the respondent used a forged Will which she alleged was signed by the deceased bequeathing her the entire property. That the alleged Will is purported to have been signed by the deceased on 23<sup>rd</sup> May 2012 yet the witnesses testified that the deceased was incapacitated to sign a Will.

8. I have considered the evidence adduced, the affidavits and submissions and the law as per the Law of Succession Act Cap 160. Joyce Wambui filed the petition for a grant of probate attaching her purported Will of the deceased which bequeaths her the deceased's properties, L.R No. Kajiado/Kaputiei-North/22630 and L.R Kajiado/Kaputei North/15054. The respondent did not adduce any evidence to challenge the allegation that the Will was forged. I believe the applicant's evidence that there was no Will and the purported Will was something produced by Joyce who knows its origin. It has been demonstrated that Joyce was married to Gideon Lorkenyoke Nareyo alias Gideon Olorkinyoki Olole and that she was the administrator of the estate of Gideon Lorkenyoke Nareyo in HCSC 1598 of 2010 where she is a beneficiary. The applicant objector is the daughter of the deceased and in line with the provisions of Section 29 (a) of Cap 160, the children of the deceased are his dependants and in a case where he has o surviving wife they rank in priority when it comes to inheriting his estate. The respondent was neither a wife nor a dependant of the deceased as stated in the evidence of the applicant and her two witnesses. She did not attend court to adduce evidence that she was the deceased's wife. The objector's evidence has been sufficiently corroborated. Section 76 (b) of Cap 160 provides that a grant that has been fraudulently obtained by making a false statement or concealment from the court of something material may be revoked or annulled. The grant obtained by Joyce Wambui was obtained fraudulently. The grant

issued on the 23<sup>rd</sup> January 2014 to the respondent/administrator in respect to the estate of Joseph Kitole Solai is hereby revoked. The respondent shall bear costs of the application. It is so ordered.

Dated, signed and delivered this 27<sup>th</sup> Day of **July 2017**

**R. E. Ougo**

**Judge**

**In The presence Of:**

**Miss Njogu FOR THE APPLICANT/OBJECTOR**

**Absent RESPONDENT/ADMINISTRATOR**

**M/s. CHARITY COURT CLERK**