



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**FAMILY DIVISION**  
**SUCCESSION CAUSE NO.1999 OF 1999**  
**IN THE MATTER OF THE ESTATE OF BONIFACE KIOI MUGEKA (DECEASED)**

ROSEMARY NDUTA.....1<sup>ST</sup> APPLICANT

JANE NYAMBURA.....2<sup>ND</sup> APPLICANT

VERSUS

JOHN KIMANI KIOI.....1<sup>ST</sup> RESPONDENT

STEPHEN NYAMU KIOI.....2<sup>ND</sup> RESPONDENT

JACINTA KABUI KIOI.....3<sup>RD</sup> RESPONDENT

MOSES MUNGAI KIOI.....4<sup>TH</sup> RESPONDENT

IRENE NJERI.....5<sup>TH</sup> RESPONDENT

**RULING**

1. Boniface Kioi Mugeka died intestate on 16<sup>th</sup> April 1992. He was survived by seven adult children, the applicants and the respondents herein. On 29<sup>th</sup> October 1999 Moses Mungai Kioi (4<sup>th</sup> respondent) and Rosemary Nduta (1st applicant), with the consent of their siblings, petitioned this court for grant of letters of administration intestate. The same was issued to them on 30<sup>th</sup> December 1999 and subsequently confirmed on 8<sup>th</sup> December 2000.
2. On 9<sup>th</sup> January 2008 the applicants together with the 5<sup>th</sup> respondent filed summons seeking the revocation/annulment of the grant issued herein on the grounds that the grant was obtained fraudulently by making false statement and by concealment from the court facts material to the cause. In the affidavit sworn in support of the summons for revocation, the 1st applicant averred that she was not involved in the application for confirmation of the grant and yet she was a co-administrator. She stated that her co-administrator had obtained the confirmed grant fraudulently by forging her signature and those of other beneficiaries. She sought the revocation of the grant and a re-distribution of the estate of the deceased. The summons is yet to be heard.

3. The applicants filed the present application dated 15<sup>th</sup> August 2013 seeking orders directing the beneficiaries of the estate of the deceased to desist from intermeddling with the properties of the estate; and the beneficiaries to account to the administrators the extent of the assets which they have intermeddled with. They further sought orders directing that the rental income from certain properties forming the estate of the deceased be deposited with their advocates to be utilized as legal fees and for better accountability to avoid wastage and misuse. The application was premised on grounds that some of the beneficiaries had subjected the estate of the deceased to imminent waste and misuse.
4. The application was opposed by the 4<sup>th</sup> respondent through his replying affidavit dated 12<sup>th</sup> February 2015. He vehemently denied the allegations of forgery stating that the first applicant was at all times involved in the succession proceedings as a co-administrator. He stated that the estate was distributed among the beneficiaries through consensus and that any subsequent sale of the said properties by any of the beneficiaries was in order as the properties having been distributed as per the certificate of confirmation of grant issued on 8<sup>th</sup> December 2000, the beneficiaries were free to deal with the same as they wished.
5. The law on intermeddling is found in **section 45** of the **Law of Succession Act (Cap. 160)** which states that;

**“(1) Except so far as expressly authorised by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.”**

Intermeddling is defined in the case of **GITAU & 2 OTHERS -V- WANDAI & 5 OTHERS (1989) KLR 231** as;

**“Any act done concerning the estate of the deceased by a person who has not obtained representation amounts to intermeddling with the estate.”**

6. The grant was confirmed on 8<sup>th</sup> December 2000 with each beneficiary getting a share of the estate properties. It is this confirmation that is challenged by the applicants’ summons for revocation that is yet to be heard and determined. As it is, the grant challenged is yet to be revoked. Thus, any dealings with the properties by the beneficiaries is lawful as the said properties were transferred to them by a lawful grant yet to be revoked by a court. The beneficiaries cannot be said to be intermeddling in the estate properties if they are dealing with properties rightfully conferred to them by a grant which is still in operation until revoked. Furthermore, the **Law of Succession Act** at **section 83 (g)** and **(h)** provides that the production of estate accounts is one of the duties of personal representatives. There is no provision for beneficiaries of an estate to produce any accounts of their dealings with property they have inherited through a grant. Accordingly, the application fails and is dismissed. This is a family dispute. I make no order as to costs.

**DATED and SIGNED at NAIROBI this 25<sup>TH</sup> day of FEBRUARY 2016.**

**A.O. MUCHELULE**

**JUDGE**

**DELIVERED at NAIROBI on the 29<sup>TH</sup> day of FEBRUARY 2016.**

**W. MUSYOKA**

**JUDGE**