



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 944 OF 2009**

**IN THE MATTER OF THE ESTATE OF NDULU KIEMA MUTHEMBWA (DECEASED)**

**RULING**

0. On the Principal Grounds that the Certificate of Confirmation issued herein on 7<sup>th</sup> October 2011 ‘has become useless and inoperative’ and that ‘it is only fair that other beneficiaries are taken into account and the distribution of the Estate be done considering the beneficiaries’, the petitioner to whom the Grant was confirmed for distribution to him of the Estate asset Machakos/Katangi/867, measuring 14.5ha. Now seeks the rectification of Grant as follows:
  - a. Andrew Kituku Kiema (Petitioner) to hold six (6) hectares for his benefit only.
  - b. Edward Mwanthi Kiema to hold six hectares for his benefit only.
  - c. Andrew Kituku Kiema and Edward Mwanthi Kiema to hold 2.5 Hectares **for the benefit of themselves and for the benefit of the other beneficiaries.**
0. The survivors of the deceased (beneficiaries) are named in the Affidavit in support of the Petition as:
  - a. Edward Mwanthi Kiema;
  - b. Josephine Nzula Kiema
  - c. Veronicah Kavinya Kiema;
  - d. Jenifer Mumbua Kiema
  - e. Winfred Katumbi Kiema
  - f. Elizabeth Sera Kiema; and
  - g. Florence Nzilani Kiema.
0. There is no explanation given as to why the petitioner and Edward Mwanthi Kiema take 6 hectares each and then hold 2.5 acres on behalf of themselves and other beneficiaries. More significantly, there is no duly signed Consent to the proposed distribution of the Estate asset.
0. Accordingly, the application for revocation of the Certificate of Confirmation and distribution as proposed in the Summons dated 15<sup>th</sup> September 2015 is deferred to a date for hearing before the Court of all the beneficiaries to confirm their Consent to the proposed distribution of the Estate.

**DATED AND DELIVERED THIS 30<sup>TH</sup> DAY OF MARCH 2016.**

**EDWARD M. MURIITHI**

**JUDGE**

**In the presence of: -**

No appearance for the Petitioner/Applicant

Ms. Doreen- Court Assistant.