



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**FAMILY DIVISION**  
**SUCCESSION CAUSE NO. 3064 OF 2014**  
**IN THE MATTER OF THE ESTATE OF MAASAI KINCHOGE MASENKE (DECEASED)**  
**BETWEEN**  
**WANINI ENE KATUALE KOPERE.....APPLICANT**  
**AND**  
**LUCY WANJIRU MASAI.....1<sup>ST</sup> RESPONDENT/1<sup>ST</sup> PETITIONER**  
**KISHONGE MASAI.....2<sup>ND</sup> RESPONDENT/2<sup>ND</sup> PETITIONER**  
**JUDGMENT**

1. The deceased Maasai Kinchoge Masenke died intestate on 12<sup>th</sup> June 1999 in Kajiado. On 28<sup>th</sup> October 2010 the respondents petitioned the Senior Resident Magistrate's Court at Kajiado for the grant of letters of administration. The grant was issued on 2<sup>nd</sup> February 2011 and confirmed on 3<sup>rd</sup> November 2011. The certificate of confirmation was rectified on 20<sup>th</sup> May 2014.

2. The applicant filed this application on 13<sup>th</sup> November 2014 seeking to have the grant revoked and/or annulled, among other prayers. Her case was that the deceased had three widows (three houses), and that she belonged to the first house. Her mother is Wanjiru Masai Kishonke. She (the applicant) had a sister Norkirammat Enole Nairove who died but left children. Her case was that her mother's household was not at all involved in the succession cause and came to learn of it much later after the estate had been distributed. The distribution did not include them. The respondents were the other two widows of the deceased and it was them and their children who had benefitted from the estate. Secondly, she complained that the petitioners had deponed that the value of the deceased estate was Kshs.100,000/= and this is what enabled them to file the petition at the Senior Resident Magistrate's Court at Kajiado. The estate of the deceased, according to her, comprised land reference 14803 situated in the South of Athi River Township in Machakos measuring about 21.17 hectares and whose value was in excess of the stated amount, and therefore that court had no jurisdiction to hear and determine the dispute.

3. The respondents did not file any response. The only response was filed by Godfrey Kamau Kinyanjui who stated that he bought 4.05 Hectares comprised in LR NO. 14803/3 which was a subdivision of the deceased's land following the distribution of the estate to the beneficiaries after the grant was confirmed. He stated that he bought the parcel from the petitioners who -

**“produced documents confirming they were the administrators of the estate of the late Masai Kinshoge Masenke.”**

He stated that he bought the land procedurally, lawfully and for value.

4. The factual basis of the summons for revocation and/or annulment was not challenged. It follows that the applicant was not involved in the petition for the grant of the estate of her deceased father. She was a beneficiary whose consent ought to have been sought. The alternative was to cite her. It was not disclosed that the deceased had another house. The result was that the applicant and her mother’s house were disinherited. This fraudulent non-disclosure of these beneficiaries would under **section 76** of the **Act** lead to the revocation of the grant.

5. Further, this estate of the deceased comprised land which measured about 21.17 Hectares in Athi River. Even without any valuation, this land had value well in excess of Kshs.100,000/=. The subordinate court at Kajiado had no pecuniary jurisdiction under **section 48(1)** of the **Act** to hear or determine it. Without jurisdiction, the proceedings before the court that led to the grant of letters of administration and the confirmation (including the rectified confirmation) were defective in substance, and therefore null. This is enough basis to nullify the grant and certificate of confirmation.

6. As for Godfrey Kamau Kinyanjui, his documents show that on 15<sup>th</sup> March 2011 the petitioners agreed to sell the said 4.05 Hectares (10 acres) of the deceased’s property to Millionaire by Choice Investment Co. Ltd for Kshs.2,300,000/=. It is clear that at the time the grant issued to the respondents had not been confirmed, and therefore they had no legal authority to sell the land. The said Company paid Kshs.400,000/= deposit to them. That transaction was null and void. The Company knew or ought to have known that the petitioners had no land to sell. On 20<sup>th</sup> January 2012 there was a Deed of Variation and Cancellation signed showing that the Company was abandoning the purchase. A Sale Agreement was signed in which the purchaser now became Godfrey Kamau Kinyanjui. It was agreed that the Kshs.400,000/= be deemed to be deposit by Godfrey who went on to pay the balance of Ksh.1,900,000/=. There was no valid Deed to vary or cancel, and therefore the transaction entered into by Godfrey was null and void. The subsequent title that he got was null and void for the same reasons. There is no evidence that he was an innocent buyer for value without notice.

7. Consequently, I allow the application by the applicant. The grant of letters of administration, the certificate of confirmation and the rectified certificate of confirmation issued to the respondents in respect of the estate of the deceased Maasai Kinshoge Masenke are hereby revoked and annulled. Parcels L.R. Nos. 14803/3, 14803/4, 14803/6, 14803/7, and 14803/8 and their transfers are each cancelled. All the land shall revert into the name of the deceased. A fresh grant of Letters of administration shall issue in the joint names of the applicant and the respondents. Any of the parties shall be at liberty to apply for the confirmation of the grant within 60 days. Lastly, the respondents are ordered to file into court, within 45 days, a full and accurate account of the income and inventory of assets and liabilities of the estate of the deceased from the time of grant of letters of administration to date. They will pay the costs of this application.

**DATED and SIGNED at NAIROBI this 12<sup>th</sup> day of AUGUST 2016.**

**A.O. MUCHELULE**

**JUDGE**

**DELIVERED and SIGNED this 17<sup>th</sup> day of AUGUST 2016**

**W.M. MUSYOKA**

**JUDGE**