



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

**SUCCESSION CAUSE NO. 943 OF 2009**

**IN THE MATTER OF THE ESTATE OF THE LATE ANNAH KALUNDE KYALO  
(DECEASED)**

**MULE KYALO MBUI.....PETITIONER/APPLICANT**

**VERSUS**

**1. PETER KYALO**

**2. DAVID MATOLO**

**3. MULEI MUTYEIA.....OBJECTORS/RESPONDENTS**

**RULING OF THE COURT**

1. Before the court are **Submissions to Citation and Revocation of Grant of Letters of Administration** issued in **Succession Cause No. 611 of 2012** dated 9<sup>th</sup> April 2015. The firm of **B.M. Musau & Co. Advocates** submitted on behalf of **Mule Kyalo Mbui** the Petitioner/Applicant in this Succession Cause.

2. The Petitioner/Applicant, **Mule Kyalo Mbui** is a son of the Deceased, **Annah Kalunde Kyalo** and is a brother to the 1<sup>st</sup> and 2<sup>nd</sup> Objectors; **David Matolo** and **Peter Kyalo**.

3. The Petitioner/Applicant filed the Petition for Grant of Letters of Administration Intestate in 2009 and the Objectors filed an objection to the Petition dated 7<sup>th</sup> December 2009 and registered in court on 7<sup>th</sup> December 2009. The grounds of the objection were set out as:-

**a. The Petitioner filed the Petition for Letters of Administration without consent of the 1<sup>st</sup> and 2<sup>nd</sup> Objectors.**

**b. The land parcel known as Masii/Vyulya/585 was bequeathed to the 1<sup>st</sup> Objector by the Deceased as a gift *inter vivos*.**

**c. The land parcel known as Masii/Vyulya/585 was sold to the 3<sup>rd</sup> Objector Mulei Mutyeia by the 1<sup>st</sup> Objector.**

**d. The Petitioner had omitted land parcel known as Masii/Vyulya/417 which is part of the estate of the deceased to whom these succession proceedings relate.**

**e. The 3<sup>rd</sup> Objector has been utilizing the land parcel known as Masii/Vyulya/585 since 2003**

**and the Petitioner seeks to deprive him of the land parcel.**

4. The objection was never prosecuted.

5. The Advocates then on record for the Petitioner/Applicant filed a **Chamber Summons** application under **Section 45 (1)** of the **Law of Succession Act** dated 19<sup>th</sup> March 2010 seeking an injunction order against the Objectors, their agents and/or servants from interfering in any manner with land parcel known as **Masii/Vyulya/585** until the objection is heard and determined.

6. The Ruling to the **Chamber Summons** was delivered by **Justice Jaden** on 19<sup>th</sup> March 2015 where the Honourable Judge disallowed the application and ordered that the parties maintain *status quo* and further directed that the parties move with speed to have the grant confirmed. She explained that since the parcel had not been demarcated, an order of injunction would be effective because the owner of the property in issue was deceased. The Honourable learned Judge found that there was no existence of a gift *inter vivos* as alleged by the Objectors.

7. The Petitioner/Applicant filed a **Citation** dated 9<sup>th</sup> April 2015 citing his brothers; **David Matolo** and **Peter Kyalo** for them to accept or refuse Letters of Administration intestate in respect of the estate of their deceased mother, **Annah Kalunde Kyalo**.

8. The Citees filed a **Memorandum of Appearance** dated 11<sup>th</sup> August 2015 together with a replying affidavit to the Citation sworn on 11<sup>th</sup> August 2015. It was from the replying affidavit filed by the Citees that the Citor learnt that the Citees had filed another succession cause in respect of the estate of the deceased, **Annah Kalunde Kyalo** being **Machakos High Court Succession Cause No. 611 of 2012**.

9. Upon perusal of the court record, the Citor realized that the Citees had forged his signature and appended it in the Consent to Making of a Grant Intestate (Form 39) and attached a copy of his National Identity Card.

10. Further, the Citor found out that the Interim Grant of Letters of Administration Intestate had already been issued to one **Peter Mule Kyalo**, the Petitioner in **Succession Cause No. 611 of 2012**. Apparently, there was no beneficiary to the estate of **Annah Kalunde** by the name **Peter Mule Kyalo**. The only surviving beneficiary was **Peter Kyalo**. The grant was made to a non-existent person.

11. From the foregoing background it is self-evident that under **Section 76** of the **Law of Succession Act**, the grant of Letters of Administration to **Peter Mule Kyalo** in **Machakos Succession Cause No. 611 of 2012** without the knowledge of the Petitioner herein **Mike Kyalo Mbui** was irregular and unlawful. At the same time the taking out of the current proceedings by the Petitioner without the consent of his brothers the 1<sup>st</sup> and 2<sup>nd</sup> Objectors was equally irregular. Further, it has not been determined conclusively the assets of the estate of the Deceased and more specifically whether the land parcel known as **Masii/Vyulya/585** was bequeathed to the 1<sup>st</sup> Objector by the Deceased as a gift *inter vivos*; or whether land parcel known as **Masii/Vyulya/417** is part of the estate of the Deceased. It would therefore be premature to issue Letters of Administration to the Petitioner in this matter with the above issues crying for determination.

12. Pursuant to the above, it is prudent to consolidate the above two Succession Causes for purposes of hearing and determination of all the issues together before Letters of Administration can be issued in this matter or before Letters of Administration issued in the **Cause No. 611 of 2012** may be revoked.

13. The final orders of the court are:-

(a) This application is dismissed with costs in the cause.

(b) This cause being **Machakos High Court Succession Cause No. 943 of 2009** is herewith consolidated with **Machakos High Court Succession Cause No. 611 of 2012** for hearing and

determination.

(c) Parties to take a mention date for directions when the said two causes shall be mentioned.

Orders accordingly.

**Dated and delivered at Machakos this 12<sup>th</sup> day of October 2016.**

**E. OGOLA**

**JUDGE**

**In the presence of:**

Mr. Nthiwa holding brief for Musau for Petitioner

Court Assistant – Mr. Munyao