



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT KISUMU**  
**SUCCESSION CAUSE NO. 736 OF 2014**  
**IN THE MATTER OF THE ESTATE OF**  
**WELLINGTON ASITIBA OPEYWA (DECEASED)**

**BETWEEN**

**HELLEN INDATA ..... APPLICANT**

**AND**

**LUCIANAH OWILA ASITIBA ... RESPONDENT/PETITIONER**

**RULING**

2. The application before the court is a summons for revocation of a grant dated 6<sup>th</sup> October, 2015, The applicant **HELEN INDATA** (“Hellen”) seeks to revoke the grant dated 28<sup>th</sup> October 2014 issued to **LUCIANAH OWILA ASITIBA**, the widow of **WELLINGTON ASITIBA OPEYWA** (“the deceased”) who died on 14<sup>th</sup> November 2013.

2. According to the applicant, the administrator failed to disclose that the applicant had a decree in her favour granting her Land Parcel No. **BUNYORE/EBUSIEKWE/1966** (“Plot 1966”). According to her deposition sworn dated 6<sup>th</sup> October 2015, Hellen stated that there was a land dispute between **JACOB ABUYEKA KOLI** (“Jacob”) and herself which was heard by the Vihiga Land Disputes Tribunal and a decision issued in her favour. The decision was adopted by the **Senior Resident Magistrate Court Vihiga, Misc. Application No. 28 of 2002** and a decree dated 8<sup>th</sup> June 2003 issued awarding Plot 1966 to her. She claimed, Jacob secretly sold the land to the deceased in 1997. She urges the court to effect the decree and hold that the Plot 1966 belongs to her.

3. The applicant's case was presented by the daughter, Alice Anindo Mayoya (“Alice”). She told the court that Hellen was 93 years old, bedridden and could not travel or communicate with court. She narrated her mother's version of events set out in the application and deposition.

4. The application was opposed through the replying affidavit of the administrator sworn on 18<sup>th</sup> November 2015. According to her, the subject land was purchased by the deceased and registered in 1997 and upto the time of his demise no one challenged his registration. She stated that he was not involved in the land case at Vihiga and added that Hellen is not a beneficiary of the deceased's estate and has no claim over it.

5. I have considered the facts and it is not in dispute that the deceased bought the land in 1997 and became its registered proprietor. He was not involved in the case before the Tribunal and as such the findings therein could not bind him. Plot 1966 is therefore part of the free property of the deceased. Alice admitted that apart from this claim based on the land dispute, there is no relationship between Hellen and the deceased. Any claim to the land or any other relief can only be claimed from Jacob.

6. This being the position, the summons for revocation cannot be sustained. It is dismissed with no order as to costs.

**DATED and DELIVERED at KISUMU this 11<sup>th</sup> day of October 2016.**

**D. S. MAJANJA**

**JUDGE**