



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**SUCCESSION CAUSE NO. 81 OF 1996**

**IN THE MATTER OF THE ESTATE OF DR. JOHN MUIA KALII – DECEASED**

**JULIANA NZISA MUIA**

**FRANCISCA MBATHA MUIA**

**CATHERINE MBANDU MUIA**

**MBENGE MUIA.....PETITIONERS**

**VERSUS**

**MARY VOSE MUIA**

**ESTHER MBETE MUIA**

**ISAAC MAWEU MUIA.....OBJECTORS**

**RULING**

**Introduction**

There are five different applications which are the subject of this ruling, and which all relate to the administration and distribution of the estate of John Muia Kalii who died on 8<sup>th</sup> March 1995 (hereinafter referred to as “the Deceased”). The background to the said applications is as follows. The Petitioners herein petitioned for letters of administration with respect to the estate of the deceased on 24<sup>th</sup> May 1996. On 14<sup>th</sup> November 2002, J. Mwera (as he then was) ruled *inter alia* that all of the widows of the late Muia Kalii to be joint administrators of his estate, including Catherine Mbandu in place of her deceased mother.

From the record, it appears that a grant could not be issued as there were seven widows, and the law allows for a maximum of four administrators. In the meantime, on 7<sup>th</sup> April 2008 Lenaola J. (as he then was) directed all the parties to file affidavits on distribution, and delivered a detailed ruling on distribution of the estate on 12<sup>th</sup> November 2008. This ruling led to the filing of the first two applications that are before this Court for determination, being the Summons dated 11<sup>th</sup> May 2009 by the 1<sup>st</sup> Objector and the Chamber Summons by the 1<sup>st</sup> to 3<sup>rd</sup> Objectors dated 4<sup>th</sup> June 2009, which this Court will return to later on in the ruling.

The two applications were consolidated for hearing on 20<sup>th</sup> July 2009 by Lenaola J. (as he then was). On

15<sup>th</sup> March 2010 parties sought directions on how to proceed with the two pending applications, and Waweru J., while noting that distribution was adjudicated upon without a grant being issued or a summons for confirmation of grant having been filed, directed the parties to agree on four persons to administer the estate and thereafter file a summons for confirmation of grant.

On 25<sup>th</sup> July 2011, the parties are recorded as having consented to Mary Vose Muia, Catherine Mbandu, Fransisca Mbatha Muia and Juliana N. Muia being issued with a grant of letters of administration. This consent led to the filing of the three other applications that are due for determination by this Court, being the Notice of Motion by the 2<sup>nd</sup> Objector dated 14<sup>th</sup> March 2012, the Summons by the 1<sup>st</sup> Objector dated 18<sup>th</sup> June 2015, and the Summons by the 2<sup>nd</sup> Objector dated 7<sup>th</sup> October 2015. I shall now proceed to summarise the pleadings on the five pending applications.

### **The Applications**

The first application for ruling is the Summons dated 11<sup>th</sup> May 2009 by the 1<sup>st</sup> Objector, in which she sought orders that the Objectors be given leave to adduce oral evidence in support of distribution of the deceased estate. The grounds for the application were that after the ruling on distribution of the estate of the deceased was given on 12<sup>th</sup> November 2008, it was found that some properties which had been sold and/or allocated by the deceased to some beneficiaries before he died had been distributed to some other beneficiaries, and/or included in the distribution of the estate.

Further, that some of the properties of the deceased estate were left out during distribution and remain undistributed, and others were included for distribution when they do not exist in the estate of deceased. The 1st Objector in her supporting affidavit gave various examples of the properties she referred to, including the property "Aimi ma Kilungu" of 10 acres, and a commercial plot which were ordered to be shared by herself and Mbatha Muia but were sold on 3rd June 2006 by the widows of the deceased; tractor number KNC 925 which did not exist, and that what existed was tractor number KNC 295; and that the Makongeni property which was awarded to Juliana Muia measures 5 acres and not 45 acres.

The Objectors then filed the second application dated 4<sup>th</sup> June 2009 in which they sought the following orders:

1. That Juliana M. Muia, Catherine Mbandu Muia, Mbeneka Muia, Mbenge Muia and their agents, employees, or/and assignees be temporarily restrained from disposing, selling, transferring or in manner interfering with the deceased's parcel of land known as Machakos /ULU/381, or any other parcel of land or property pending the determination of the application.
2. That the Court do review its ruling and order dated 12.11.2008 by Lenaola J., and do set aside all the proceedings and orders thereof in this succession matter.
3. That the lawful and legal procedure pertaining the estate of Muia Kalii deceased be followed.

The grounds for the application are stated in the application and supporting and further affidavits sworn on 4<sup>th</sup> June 2009 and 4<sup>th</sup> March 2010 respectively by the 1<sup>st</sup> Objector. These are that the respondents were in the process of disposing a parcel of land known as Machakos ULU/381 which property is in the name of the deceased, and all the beneficiaries had not been consulted. Further, that the certificate of grant has never been issued in this matter nor was it advertised in the Kenya Gazette as required by law.

It was reiterated by the Objectors that there were assets that were distributed that had already been sold to third parties, and some properties given to some of the beneficiaries by the deceased were allocated to different beneficiaries. Further, that there were some assets omitted from the list of assets that were distributed. Lastly, that it was necessary to have an evaluation of all the assets undertaken so as to have a fair distribution of the same.

The 1<sup>st</sup> Petitioner filed replying affidavits in opposition to the two applications. In the first affidavit sworn

on 18<sup>th</sup> June 2016, she stated that the Objectors have realized that the judgment of the Court had exposed them for disposing of the deceased's estate without the authority of the Court, including 10 acres of land at Aimi Ma Kilungu Company Ltd, and the tractor registration number KNC 295. Further, that the Objectors were given a chance to present to the court their proposals as to the distribution of the estate and failed to do so. It was also averred that the Objectors have never accepted that Mbenge Muia and Mbeneka Muia are widows of the deceased, and that the other beneficiaries have accepted the court's judgment and would like to have it implemented.

The Petitioners' response to the second application was in a replying affidavit sworn by the 1<sup>st</sup> Petitioner on 30<sup>th</sup> June 2009, wherein they admitted that they were in the process of selling a portion of land of 50ft by 100ft, and requested the Court to allow them to do so and for the proceeds to be shared among the 7 widows of the deceased so that they could get money for food. Further, that there is no requirement in law for valuation of the deceased's assets and the parties had agreed on the distribution of the same. The Petitioners averred that the Court could still make an order as to gazettelement of the grant, and correct any typographical errors in the judgment without more time being wasted. It was also alleged that the Objectors had not specified the assets that were omitted from distribution.

The remaining three applications touch on the question of who should be the administrators of the estate of the deceased. In the Notice of Motion dated 14<sup>th</sup> March 2012, the 2<sup>nd</sup> Objector is seeking orders that this Court reviews and set aside the consent order entered into in Court on 25<sup>th</sup> July 2011. The grounds for the application are that the Advocates then on record for the Applicant did not have instructions to enter into the consent which excluded the name of the 2<sup>nd</sup> Objector, and that the express instructions communicated to the Applicant's then Advocate were that Mary Vose Muia, Catherine Mbandu Muia, Esther Mbetete Muia and Francisca Mbatha were the parties agreed upon to have the grant issued in their names.

The 1<sup>st</sup> Objector supported the said application in a replying affidavit which she swore on 12<sup>th</sup> July 2012, wherein she stated that the depositions of the 2<sup>nd</sup> Objector were true, and that the consent of 25/7/2011 was made through some mistake sufficient to make it voidable. Further, that pursuant to section 66 of the Law of Succession Act, she was the first in order of preference to be one of the administratrix of the estate and the 2<sup>nd</sup> Objector as the 3<sup>rd</sup> wife of the deceased is the 3<sup>rd</sup> in preference as the 2<sup>nd</sup> wife is represented by her daughter Catherine Mbandu Muia. It was averred that it is only fair and just that the representation of the estate be strictly in accordance with the order of preference provided under section 66 of the Law of Succession Act.

The 1<sup>st</sup> Objector also averred that her advocate who was involved in the negotiations was not the one who recorded the consent which led to the mistake which is clearly apparent in the said consent, and that the proposal contained in her advocate's letter dated 22<sup>nd</sup> March 2010 reflects her instructions.

The 1<sup>st</sup> Petitioner filed a replying affidavit sworn on 5<sup>th</sup> July 2012 to the 2<sup>nd</sup> Objector's application, wherein she stated that the consent recorded on 25/07/2011 was as a result of intense negotiations on that day between the Petitioners' lawyers and the Objectors' lawyers, who were all present and nobody objected to the consent recorded in Court. Further, that the letter dated 22/03/2010 was sent to the Petitioners' lawyer long before the consent of 25/07/2010, and that the Petitioners objected to the proposal by their letter dated 01/04/2010, a copy of which was annexed. Therefore, that the said instructions were superseded by the consent recorded on 25/07/2010.

According to the Petitioners, there is nothing wrong if those who were agreed upon to administer the Estate can go on without the 2<sup>nd</sup> Objector, and nothing has been shown that will result into injustice to, or prejudice the said Objector. Further, that litigation should come to an end and the Court needs to adopt the judgment of Lenaola J. for this matter to end once and for all.

The last two applications before this Court for determination are the summons subsequently filed by the 1<sup>st</sup> and 2<sup>nd</sup> Objectors dated 18<sup>th</sup> June 2015 and 7<sup>th</sup> October 2015 respectively, in which they are both

seeking orders that the 1<sup>st</sup> Petitioner herein, Juliana Nzisa Muia, be barred from being one of the administrators of the estate of John Muia Kalii, and that the Petitioners be restrained from further intermeddling with the estate of the deceased until the succession proceedings are finalized.

The 1<sup>st</sup> Objector's grounds are that the 1<sup>st</sup> Petitioner has intermeddled with the free property of the deceased person in that she has fraudulently transferred in to her name land title No. MACHAKOS/ULU/104, one of the properties of the deceased's estate, and MACHAKOS/ULU/105 registered in the name of the late father of the deceased. Further, that the actions of the 1<sup>st</sup> Petitioner are a clear manifestation that should she be appointed as an administratrix of the said estate, the beneficiaries of the estate will be defrauded of their inheritance. Lastly, that the orders sought herein are necessary to preserve the estate of the deceased until the succession case is heard and determined.

The 2<sup>nd</sup> Objector on her part also averred that the 1<sup>st</sup> Petitioner has intermeddled with the estate of the deceased, in that firstly, she has fraudulently caused a transfer into her name of some properties which form part of the estate of the deceased including the parcels of land known as MACHAKOS/ULU/104 and MACHAKOS/ULU/105. Secondly, that the 1<sup>st</sup> Petitioner sold one share of the deceased in Kalembwani & Ngaamba Farmers Ltd to one Enock Mailu, and as a result disposed of 5 acres of land which resulted from the aforesaid share.

Thirdly, that the 1<sup>st</sup> Petitioner intentionally concealed from this court some properties that belonged to the deceased while filing this succession cause, and also left out some of the beneficiaries of the estate of the deceased. Therefore, that should the 1<sup>st</sup> Petitioner be appointed an administratrix of the estate, the other beneficiaries of the estate will stand to be defrauded of their inheritance.

The 1<sup>st</sup> and 2<sup>nd</sup> Objectors reiterated these grounds in their supporting affidavits to the applications sworn on 18<sup>th</sup> June 2015 and 7<sup>th</sup> October 2015 respectively, and averred that after investigations were carried out by the criminal investigations department on the said malpractices, the 1<sup>st</sup> Petitioner went underground and is being sought by Police to face criminal charges. The 2<sup>nd</sup> Objector also listed the deceased's beneficiaries and properties that were left out of the succession proceedings.

The 1<sup>st</sup> Petitioner denied selling any property of the deceased in her replying affidavits to the applications by the 1<sup>st</sup> and 2<sup>nd</sup> Objectors sworn on 5<sup>th</sup> October 2015 and 22<sup>nd</sup> January 2016 respectively, and claimed that the property registered in her name was given to her by the deceased. She further denied having been involved in any malpractices involving the Estate of John Kalii Muia or having gone underground, and stated that there are no criminal charges that have been brought against her or policemen looking for her.

According to the 1<sup>st</sup> Petitioner, she cannot be removed as one of the Petitioners to the Deceased's estate since there was a consent that she should be among the 4 widows to take letters of administration. She claimed that a son of the 1<sup>st</sup> Objector, one Isaac Maweu Muia, who is the 3<sup>rd</sup> Objector herein, is the one who wants to kill her and chase her from the deceased property so that he can take over the property.

The 1<sup>st</sup> Petitioner further averred that the 2<sup>nd</sup> Objector cannot claim that other beneficiaries and properties of the Deceased estate were omitted when the petition was filed; when she was also one of the original petitioners in 1996 and never complained about any such omission, and that the parties had agreed on all the properties of the Deceased. Further, that the Objectors have also sold properties of the Deceased's estate, and none of them is suitable to be a personal representatives of the Deceased.

### **The Issues and Determination**

This Court directed that all the five applications be heard and determined together by way of affidavit evidence, and on the basis of submissions filed. Manthi Masika & Company Advocates for the Petitioners

filed submissions dated 27<sup>th</sup> February 2010 on the applications dated 4<sup>th</sup> June 2009 and 11<sup>th</sup> May 2009; submissions dated 20<sup>th</sup> November 2013 on the Notice of Motion dated 14<sup>th</sup> March 2012; and submissions dated 20<sup>th</sup> April 2016 on the summons dated 18<sup>th</sup> June 2015 and 7<sup>th</sup> October 2015.

Katunga Mbuva & Company Advocates for the Objectors filed submissions dated 11<sup>th</sup> March 2010 on the application dated 4<sup>th</sup> June 2009. F.M Mulwa Advocate for the 1<sup>st</sup> Objector filed submissions dated 26<sup>th</sup> July 2014 on the application dated 14<sup>th</sup> March 2012; and submissions dated 21<sup>st</sup> March 2016 on the summons dated 18<sup>th</sup> June 2015 and 7<sup>th</sup> October 2015. Andrew Makundi & Company Advocates for the 2<sup>nd</sup> Objector filed submissions dated 7<sup>th</sup> April 2016 on the summons dated 18<sup>th</sup> June 2015 and 7<sup>th</sup> October 2015

There are four main issues for determination. The first is whether the ruling on distribution of the estate of John Muia Kalii delivered herein on 12<sup>th</sup> November 2008 should be reviewed and or set aside, and if so what appropriate directions as to should be given. Secondly, is whether the consent order entered into in Court on 25<sup>th</sup> July 2011 should be set aside or reviewed; thirdly, is whether that the 1<sup>st</sup> Petitioner herein, Juliana Nzisa Muia, should be barred from being one of the administrators of the estate of John Muia Kalii; and lastly, whether the injunctions sought as against the 1<sup>st</sup> Petitioner should issue.

On the first issue, the Objectors argued that they have a right to apply for review under the Civil Procedure Rules of some errors and omissions, and also on the entire probate. Further, that some of the errors were that the estate was never gazetted in the official Kenya Gazette; there was no application for confirmation of grant made before the Court gave a ruling for distribution of the deceased assets; and that some of the properties listed for distribution have been sold and other properties of the deceased are missing from the list.

The Petitioners on the other hand submitted that no cogent reasons have been given by the Objectors for review of the previous Court orders for reasons that firstly, there is no Court order extracted by the Objectors and the application is therefore incompetent in law. Reliance was placed on the Court of Appeal decision in **Veronica R. Mbogoh vs Margeret Rachel Muthoni & Another**, NRB Civil Appeal No. 311 of 2002 in this regard.

Secondly, that the application for review does not list down the grounds on which the application is founded. Further, that the application for review was not made within a reasonable time, and the Objectors are enjoying the property of the deceased from which they had sold some of the properties and would like to delay the suit indefinitely. Thirdly, that the Objectors were given the opportunity to list down all the assets and liabilities of the deceased and to have them valued, and none of them said that there was property or liability of the deceased that was missing.

Fourthly, that the issue of the formal application not having been made is not an issue, because some of the Objectors in the Petition for the Letters of Administration stated the beneficiaries of the estate of the deceased and also all the assets of the deceased. Lastly, it was further submitted on the point of the cause of succession having not been gazetted, that the same can still be done.

On the second issue, the Objectors submitted that the consent recorded on 25<sup>th</sup> July 2011 was inconsistent with the proposals by the counsel for the Objectors in his letter dated 22<sup>nd</sup> March 2010 annexed to the Affidavit of Esther Mbete Muia sworn on 14<sup>th</sup> March 2012. Further, that the draft order of 25<sup>th</sup> July 2011 was presented for signing and sealing, without first being forwarded to the Advocate for the Objectors for approval as required under the pertinent provisions. Lastly, that it is common ground that all the parties were in agreement that the administrators were to be four among the widows of the deceased, in order of seniority as provided by section 66 of the Law of Succession Act.

The Petitioners, after giving a detailed account of the proceedings leading to the impugned consent recorded on 25<sup>th</sup> July 2011, submitted that the Objectors had not shown the basis of review of the consent since no mistake or error apparent on the face of record or any other sufficient reason or evidence that

was not available at the time of the making of the Order has been shown.

Further, that a consent order or judgment may only be set aside if the applicant shows that there was fraud or collusion or any other reason which can enable the Court to set aside the agreement reached, and reliance was placed on the decision in **Wasike vs Wamboko, (1981) KLR 429**. It was further submitted by the Petitioners that it had not been shown that the Advocate who entered into the consent acted without authority or instructions, and the decision by the Court of Appeal in **KCB Ltd vs Benjoh Almagamated Ltd & Another, NRB Civil Appeal No. 276 of 1997** was cited for the position that no limitation of the implied authority of an Advocate is available to a client against the other side unless such limitations have been brought to their notice. Lastly, it was submitted that the delay of 8 months before the application for review was filed has not been explained by the Objectors.

The applicable law on review or setting aside of a ruling and consent judgments is section 80 of the Civil Procedure Act, and Order 45 Rule 1 of the Civil Procedure Rules, which apply to succession matter by dint of rule 63 of the Probate and Administration Rules. Section 80 of the Civil Procedure Act provides as follows:

**“Any person who considers himself aggrieved—**

**(a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or**

**(b) by a decree or order from which no appeal is allowed by this Act,**

**may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”**

Order 45 Rule 1 of the Civil Procedure Rules elaborates on the grounds on which a judgment or decree can be set aside as follows:

**“ (1) Any person considering himself aggrieved—**

**(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or**

**(b) by a decree or order from which no appeal is hereby allowed,**

**and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.”**

It is noteworthy that the above provisions refer to decrees or orders, and therefore it is not a necessity for a decree to be attached to an application for review as argued by the Petitioners, and in light of the spirit of section 159 of the Constitution of dispensing substantive justice, it is enough if an applicant establishes that there were orders given by a court through acceptable legal means.

In addition, the applicability of the above-cited provisions to consent judgments was decided on by the Court of Appeal in **Munyiri vs Ndunguya (1985) KLR 370** where it was held that the only remedy available to parties who want to get out of a consent order is to set aside the consent order by way of review, or by bringing a fresh suit in court. The Court of Appeal also affirmed in the case of **Tropical Food Products International Ltd -vs- The Eastern and Southern African Trade and Development Bank, Civil Appeal No. 253 of 2002** that the High Court has the jurisdiction to review, vary or set aside a consent judgment under Order 45 Rule 1 of the Civil Procedure Rules and section 80 of the Civil

## Procedure Act.

Coming to the instant applications, I find that there was an error on the face of the record as regards the ruling on distribution delivered on 12<sup>th</sup> November 2008 for the reasons that the applicable procedures as to distribution of a deceased person's property were not followed. Under section 55 of the Law of Succession Act, the capital assets of a deceased person cannot be distributed or any property converted unless and until a grant has been confirmed as provided by section 71 of the Act.

As at the time of the ruling on distribution on 12<sup>th</sup> November 2008, there was still no agreement as to the representation of the estate of the deceased, and no grant had been issued, which could be the subject of confirmation. The procedure adopted by the learned judge of parties filing affidavits of distribution is one that is employed after a grant has been issued and summons for confirmation filed, and only when there is no agreement as to distribution, and was therefore in the circumstances premature.

On the consent entered on 25<sup>th</sup> July 2011, I also find that there was an error on the face of the record for two reasons. Firstly, the said consent was made contrary to instructions given to and by the counsel for the 2<sup>nd</sup> Objector, as evidenced by his letter dated 22<sup>nd</sup> March 2010 which was annexed to the Affidavit of Esther Mbete Muia sworn on 14<sup>th</sup> March 2010. I have perused the said letter which was addressed to the counsel for the Petitioners, as well as the response from the said counsel dated 1<sup>st</sup> April 2010, which was attached to the replying affidavit sworn by the 1<sup>st</sup> Petitioner on 3<sup>rd</sup> July 2012.

The Petitioners' counsel in his letter dated 1<sup>st</sup> April 2010 settled on the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners as administrators, and the Objectors' counsel was to provide the two remaining names. It however turned out that neither the 1<sup>st</sup> or 2<sup>nd</sup> Objectors were included in the consent that was eventually adopted in Court on 25<sup>th</sup> July 2011, which was contrary to both the Objector's instructions as well as the Petitioners' own proposal. It is also noteworthy that the Petitioners' counsel was aware of these instructions and proposals.

Secondly, section 66 of the Law of Succession Act provides for the order of preference in the issue of letters of administration starting with the surviving spouse of spouses. Parties cannot consent to defeat express provisions of the law without the written consent of all the beneficiaries, particularly as in the instant case there were indications that beneficiaries were not agreed on administrators.

I note in this regard that it is alleged that there are 7 widows of the deceased, six of whom are surviving. In light of the limit placed by the law as to four administrators in respect of any estate of a deceased person, the parties will need to agree which of the six surviving widows shall be the administrators, failing which the Court shall then apply the law in resolving the dispute. It is also noteworthy in this regard that until or unless this agreement is reached or the issue otherwise decided, this Court cannot give directions as to the processes to follow in the distribution of the deceased's estate. Likewise, the arguments and agreement on the legitimate beneficiaries and assets of the Deceased will have to await the said decision.

On the third and last issues, the Objectors submitted that the actions of the 1<sup>st</sup> Petitioner constitutes fraud and amount to intermeddling under section 45 of the Law of Succession Act, and she is therefore not fit to be an administrator. The Petitioners on their part submitted that there is no evidence to show that the parcel of land known as Machakos / ULU /105 or was the property of the Deceased, and that the parcel of land known as Machakos / ULU / 104 does not belong to the family of the late John Kalii. Further, there was no evidence provided of the sale of shares of Kalemwani and Ngaamba Farms Ltd to one Enoch Mailu by the 1<sup>st</sup> Petitioner. Therefore, that the 1<sup>st</sup> Petitioner cannot be accused of having intermeddled with the deceased's estate.

The issue of removing the 1<sup>st</sup> Petitioner as an administrator has already been dealt with by the findings of the Court in the foregoing as to the setting aside of the consent order as regards the administrators of the estate of the deceased. As regards the injunctions sought against the 1<sup>st</sup> Petitioner, the provisions of section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules give wide

discretion to the Court as to the orders it can make, including orders of injunction if the interests of justice so require.

The principles that are applicable for the grant of a temporary injunction are stated in **Giella vs Cassman Brown & Co Ltd, (1973) EA 358**, which are that the applicant must establish a *prima facie* case, and that he or she would suffer irreparable loss which may not be compensated by an award of damages. If the Court finds that the two requirements are not satisfied, it may decide an application on the balance of convenience.

Applying these principles to the instant application, this Court agrees with the Petitioners that insufficient evidence was adduced of the alleged sale by the 1st Petitioner of the deceased's properties. I have perused the documents of title attached by the 1<sup>st</sup> and 2<sup>nd</sup> Objectors to their affidavits sworn on 18<sup>th</sup> June 2015 and 7<sup>th</sup> October 2015 respectively in support of their applications. I find that no evidence was brought to demonstrate the ownership by, or beneficial interest of the deceased in Machakos / ULU /104 and Machakos / ULU /105.

Machakos / ULU /104 is shown as having been registered in the name of the deceased until 23<sup>rd</sup> June 1993 when it was transferred to the 1<sup>st</sup> Petitioner. The said transfer took place during the lifetime of the deceased, who died on . Machakos / ULU /105 on the other hand was registered in the name of one Kalii Nthakyo and not the deceased, before a title deed was issued to the 1<sup>st</sup> Petitioner on 24<sup>th</sup> September 2013. The Objectors did not demonstrate the deceased's interest in the said property, neither did they provide evidence of any other property sold by the 1<sup>st</sup> Petitioner.

These findings notwithstanding, this Court notes that there have been allegations and counter allegations made of the Petitioners and Objectors disposing of the deceased's property, and that the overriding and common interest and duty of the Petitioners and Objectors is to protect the Deceased's estate, pending the hearing and determination of this succession cause. This Court therefore finds that there is need to give the necessary orders to preserve the Deceased's estate, pursuant to the inherent powers granted by section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules.

I accordingly order as follows:

1. The ruling and orders on distribution of the estate of John Muia Kalii delivered herein on 12<sup>th</sup> November 2008 by Lenaola J.(as he then was) be and is hereby set aside.
2. The consent order entered into herein in Court on 25<sup>th</sup> July 2011 be and is hereby set aside.
3. The beneficiaries of the Estate of Dr. John Muia Kalii (Deceased) shall within sixty (60) days of the date of this ruling agree on four (4) administrators of the said estate and file the signed consent by all beneficiaries to the said agreement, failing which the Court shall proceed to appoint four administrators in accordance with the law.
4. The *status quo* that shall obtain as regards all the properties and assets belonging to the estate of the deceased pending the appointment of new administrators and issue of grant of administration with respect to the Estate of Dr. John Muia Kalii (Deceased) shall be that the beneficiaries of the said deceased and estate shall continue to be in possession and occupation of the properties and assets they currently occupy as at the date of this ruling, and the said beneficiaries shall not sell, transfer, lease or in any manner dispose of or waste the said properties and assets, nor in any manner interfere with the current occupation and possession of the same by any other beneficiary.
5. Each party shall meet their respective costs of the Summons dated 11<sup>th</sup> May 2009 , Chamber Summons dated 4<sup>th</sup> June 2009, Notice of Motion date 14<sup>th</sup> March 2012, Summons dated 18<sup>th</sup> June 2015, and Summons dated 7<sup>th</sup> October 2015 .

Orders accordingly.

Dated, signed and delivered in open court at Machakos this 13<sup>th</sup> day of December 2016.

**P. NYAMWEYA**

**JUDGE**