



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MACHAKOS**  
**SUCCESSION CAUSE NO. 306 OF 2011**  
**IN THE MATTER OF THE ESTATE OF ESTHER MUKETHE KILOO (DECEASED)**

**1. BETH NDINDA MUASA**

**2. ELIZABETH MWENDE MUASA**

**3. WENDWA DAVID KILOO.....PETITIONERS/RESPONDENTS**

**VERSUS**

**1. DAVID MUASA KILOO**

**2. RUTH MUTANU KILOO.....OBJECTORS/APPLICANTS**

**R U L I N G**

1. The summons for revocation of grant dated 3/2/2014 seeks the following orders:-

**1. (Spent).**

**2. THAT pending the hearing hereof, a preservative order to disuse against the Petitioners/Respondents preventing them from selling, sub-dividing, disposing, alienating or in any other way from interfering or meddling with Land Parcel Number Machakos/Kaewa/2372.**

**3. THAT the grant of Probate or Letters of Administration issued to the Petitioners herein on 1/2/2012 be revoked and/or annulled forthwith and a fresh one be issued to the Objectors/Interested Parties.**

**4. THAT the costs of the application be in the cause.**

2. According to the affidavit in support, the Applicants are the son and daughter to the deceased and rank in priority to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents who are former daughter in laws and the 3<sup>rd</sup> Respondent who is a grandson to the deceased. The Applicants have faulted the proceedings that lead to the issuance of the grant, stating that the consent of the other beneficiaries was not obtained. That the Respondent deliberately left out two beneficiaries by the names **Mbula Kiloo** and the late **Nthambi Kiloo**. The Applicants also accuse the Respondents of intermeddling with the estate by selling land parcel **No. Machakos/Kaewa/2372**.

3. In opposition to the application, the Respondents filed their replying affidavits. The Respondents averred that the 1<sup>st</sup> Applicant, **David Muasa Killoo** is currently serving a life sentence at **Kamiti Maximum Prison** and can therefore not administer the estate from prison. It is further stated that the other beneficiaries refused to sign the consent and were squabbling and busy selling parts of the estate. That the Respondents who are the administrators of the estate and beneficiaries and are settled on the land the subject matter of these proceedings. The Respondents have contended that there are no tenable reasons why the grant should be revoked.

4. The Respondents further asserted that following the death of the deceased, the land the subject matter of these proceedings was subdivided by the clan prior to the filing of the petition herein. That the land was subdivided among the deceased's beneficiaries in order to stop the Applicants from selling the whole of it to third parties. The Respondents accuse the Applicants who are the surviving son and daughter to the deceased of having concealed from this court that they have sold some parts of the land and also concealed the fact that the 1<sup>st</sup> Applicant is serving a life sentence.

5. During the hearing of the application, the parties agreed to canvass the same by way of written submissions. I have duly considered the said submissions.

6. Under **section 76** of the **Law of Succession Act Cap 160 Laws of Kenya**, a grant of Letters of Administration intestate may be revoked in the following circumstances:-

**a. The proceedings to obtain the grant were defective to substance.**

**b. The grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case.**

**c. That the grant was obtained by means of untrue allegations of fact.**

**d. That the person to whom the grant was made has failed to apply for confirmation of grant; to diligently administer the estate, to produce to the court, if required, an inventory or account of administration or the grant has become useless and inoperative through subsequent circumstances.**

7. In the case at hand, it is not denied that there was concealment of some of the beneficiaries. This was something material to this case.

8. It is further observed that the proceedings to obtain the grant were defective in substance due to failure to comply with the law. **Section 38** of the **Law of Succession Act** provides as follows:-

**“Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.”**

9. From the affidavit evidence herein, it is not in dispute that the Applicants are a son and a daughter to the deceased. It is not in contest whether the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are either daughter in laws or former daughters in law to the deceased. The 3<sup>rd</sup> Respondent is a grandchild to the deceased. Consequently, the Applicants rank higher in the degree of consanguinity in the administration of the estate of the deceased. The Respondents therefore needed to obtain the consent of the applicants as provided for under **Rule No. 26** of the **Probate and Administration Rules**.

10. There are allegations and counter allegations of intermeddling by way of selling parts of the land the subject matter of this cause. However, on 7/5/14 the parties by consent agreed that preservatory orders do issue. The issues relating to who has sold what portion of the land will be dealt with at the stage of the confirmation of the grant.

11. Having arrived at the finding that there was concealment of material facts and that the proceedings are defective in substance, I will exercise this court's discretion and revoke the grant issued herein on 1/2/2012. Under **section 66** of the **Law of Succession Act**, I will further exercise this court's discretion to appoint the new administrators.

12. It is not denied that the 1<sup>st</sup> Applicant, **David Muasa Killoo** is serving a sentence of life imprisonment. It would not be in the interests of the estate to appoint the 1<sup>st</sup> Applicant as an administrator as it will not be possible to administer the estate from prison. Consequently, I appoint the 2<sup>nd</sup> Applicant, **Ruth Mutanu Killoo** one of the administrators together with one other person of the family's choice other than the rest of the parties herein.

13. With the foregoing the application is allowed as prayed.

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**B. THURANIRA JADEN**

**JUDGE**

**Dated and delivered at Machakos this 26<sup>th</sup> day of November 2014.**

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**B. THURANIRA JADEN**

**JUDGE**