



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISII**  
**SUCCESSION CAUSE NO. 540 OF 2010**  
**IN THE MATTER OF THE ESTATE OF:**

MAIRARI MAGESI.....DECEASED

**VERSUS**

MAIRARI JULIUS MUNIKO.....PETITIONER

**JUDGMENT**

1. The summons herein are dated 21<sup>st</sup> march 2012 seeking ORDERS, inter alia, for:
  1. *That pending the hearing and determination of this application, inter parties, the court do issue an order for preservation of the Estate property and all the resulting sub-division by ordering a restriction on all dealings on L.R. NO. Nyabasi/Bomerani/80 which is about to be disposed of by the Respondent.*
  2. *That the grant of letters of Administration made on to the Respondent be revoked and/or annulled.*
  3. *That the sub-division, transfer and Registration of the Estate property if any be cancelled and do revert to the original registration being NYABASI/BOMERANI/80.*

**WHICH APPLICATION IS** based on the following grounds:-

- i. *The proceedings to obtain grant were defective in substance.*
- ii. *The grant was obtained fraudulently by making of a false statement.*
- iii. *The Respondent concealed from the court a material fact from the court that he was not a beneficiary of the Estate of the deceased MAIRARI MAGESI.*
- iv. *The Respondent has purported to distribute L.R. Nyabasi/Bomerani/80 which belong to 5 persons Mbusiro Magesi(deceased) Mairari Magesi) chacha Magesi(deceased), Muniko Magesi and Wangubo Magesi hence disinheriting other share holders.*
- v. *The Respondent has descended on the estate property, subdivided the Estate and with the sole intention of disposing it by way of sale, while not minding that the estate did not wholly belong to the deceased Wairari Magesi.*
- vi. *The Respondent intends to carve out the estate and give it to people who are not beneficiaries of the deceased.*
- vii. *The Respondent is in the process of identifying buyers with a view to selling the remaining estate to the detriment of having lawful beneficiaries herein.*
- viii. *The Respondent named only his brothers and sisters who do not rank (as) his heirs in priority as*

- beneficiaries of the deceased as he is not a son of the deceased, neither are Nyangi Mairari, Maria Gati, Esther Chacha whom he named in form P&A herein.
- ix. *The Respondent fraudulently filed the succession cause using a letter obtained from the chief NYABASI EAST LOCATION office which letter was defective in substance and lacking in material particulars. Solely for fraud purposes.*
  - x. *The Kehancha Senior Resident magistrate already given letters of administration to the deceased's East side succession cause No. 21 of 2009 which grant was confirmed on 31<sup>st</sup> May, 2011.*
  - xi. *The Respondent has committed fraud by alleging that CHACHA MAGESI signed form 38 herein whereas Chacha Magesi died in 1997 and his Estate succeeded vide Kehancha Senior Resident Magistrate Succession Cause No. 19 of 2009.*
  - xii. *The Respondent has committed fraud by alleging that both Muniko Magesi and Wangubo Magesi signed on form 38 when they did not.*

2. If orders for annulment of grant are not issued the lawful beneficiaries of the Estate land shall suffer irreparable loss by losing their ancestral land.
3. I have read the replying affidavit by the Respondent dated 5<sup>th</sup> day of July, 2012. I have also read both respondent's submission and the applicant's submissions each in respect their case. The court finds that the applicants herein have a credible argument in support of their case, that the matter requires intervention to stop fraudulent activities perpetrated by the Respondent.
4. Accordingly, the application dated 21<sup>st</sup> March, 2012 be and is hereby allowed and the following orders to issue:

1. *The preservation of the Estate property i.e. L.R. No. Nyabasi/Bomerani/80 and all the resultant sub-divisions thereof, ordering restrictions on all dealings thereof.*
2. *The grant of letters of Administration made to the Respondent be and is hereby revoked and/or annulled.*
3. *The sub-division, transfer and Registration of the Estate property be and is hereby cancelled and be is hereby caused to revert to the original registration in respect of NYABASI/BOMERANI/80.*
4. *The genuine heirs and beneficiaries in respect of the following deceased persons:*

- i. ***Mbusiro Magesi- deceased***
- ii. ***Mairari Magesi- deceased***
- iii. ***Chacha Magesi- deceased***

*Do apply for the grant of letters of administration in respect their portion of the estate-  
de nove.*

5. *The costs be borne by the Respondent.*

It is so ordered.

**Judgment dated and delivered at KISII this 19<sup>th</sup> day of December, 2014**

**C.B. NAGILLAH,**

**JUDGE.**

**In the presence of:-**

Bunde holding brief for Abisai for the applicant

No appearance for the Respondent

Edwin Mongare Court Clerk.