

REPUBLIC OF KENYA

High Court at Kakamega

Succession Cause 236 of 2011

IN THE MATTER OF THE ESTATE OF JOSEPH MUNDIA KIGANGALA- (DECEASED)
BETWEEN

FRANCO ALUMASA MUNDIA PETITIONER/RESPONDENT

VERSUS

JOHN ANONO MUNDIA OBJECTOR/APPLICANT

R U L I N G

The application by way of Notice of Motion dated 29.11.11 seeks orders for the revocation of the grant issued herein.

The application is supported by the affidavit of **JOHN ANONO MUNDIA** the Objector/applicant sworn on 29.11.11.

The main ground upon which the application is based is that the Petitioner/respondent concealed material facts when he moved the court in that he did not disclose the other survivors/beneficiaries. It is further contended that one **RAJAB KUNZA MBARUKA** who is a stranger to the estate has been included and that the respondent did not obtain the consent of other family members before filing the Succession Cause.

In opposition to the application, the respondent **FRANCO ALUMASA MUNDIA** filed a replying affidavit sworn on 18.9.2012. According to the said affidavit, the respondent has averred that he is the one who lived with his late father on the land in question and the father bequeathed the land to him.

It is further contended that the deceased had purchased the said land and it was therefore not ancestral land.

The P & A form 5 reflects the respondent as the only person who survived the deceased. The replying affidavit does not deny that there were other survivors.

There was therefore concealment of material facts when the grant was issued. There was also no consent obtained from the other beneficiaries before the Succession cause was filed.

The application has merits and is allowed. Costs to the applicant.

Delivered, dated and signed at Kakamega this 18th day of December, 2012

B. THURANIRA JADEN

J U D G E