

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE NO. 498 OF 2001

**IN THE MATTER OF THE ESTATE OF JOSEPH MUNENE
KIBUI.....DECEASED**

DUNCAN NDEGWA MUNENE.....1ST

APPLICANT

JOHN KIBUI MUNENE.....2ND

APPLICANT

RULING

Pursuant to the provisions of *Section 76* of the Law of Succession Act and *rules 44(1)* and *73* of the Probate and Administration Rules, **Duncan Ndegwa Munene** and **John Kibui Munene**, being the 1st and 2nd Applicants herein, took out the Summons for revocation or annulment of grant dated 28th October 2010 in which they applied for the grant issued to Rose Wanjiru Munene in respect of the Estate of Joseph Munene Kibui, deceased, revoked. They also applied for a fresh grant to be issued to them. The summons is supported by the affidavit of Duncan Ndegwa Munene sworn on 28th October 2010.

I have considered the grounds set out on the face of the Summons for Revocation of Grant plus the facts deponed in the affidavit filed in support. Basically the Applicants are saying that the grant issued to Rose Wanjiru Munene and confirmed on 7th February 1994 vide **Nyeri S.P.M. SUCC. CAUSE NO. 194 OF 1993** has become useless and inoperative because Rose Wanjiru Munene died before administering the deceased Estate in terms of the confirmed grant. The Applicants annexed to the supporting affidavit copies of the official search in respect of **L.R. NO. KABARU/BLOCK 2/MUTHINA/561**, the death certificate of Rose Wanjiru Kibui and the Certificate of the confirmed grant.

After a careful consideration of the application, it is clear that the Applicants are sons of the late Joseph Munene Kibui, hence they are entitled to apply for issuance of grant. It is also apparent that Rose Wanjiru Kibui died before distributing the Estate in terms of the confirmed grant. It is therefore obvious that the grant has become useless and inoperative as envisaged under *Section 76 (1)* of the Law of Succession Act hence it serves no useful purposes. I hereby order the confirmed grant revoked. A fresh grant be issued in the joint names of the Applicants. The Applicants may apply for the grant to be confirmed notwithstanding that six months will not have lapsed. Costs shall be in the cause.

Dated and delivered at Nyeri this 8th day of July 2011.

J. K. SERGON

JUDGE

In open court in the absence of the parties.