



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NYERI**  
**SUCCESSION CAUSE NO. 568 OF 1999**

**IN THE MATTER OF THE ESTATE OF KINGORI WANG'OMBE KIHORO (DECEASED)**

**DAVID KIHORO GICHUKI**  
**JOSEPH MAINA GICHUKI.....PETITIONERS**

**VERSUS**  
**WANJIKU GICHUKI**  
**SAMUEL WAIHAKA GICHUKI.....RESPONDENTS**  
**JOHN KARIUKI**

**RULING**

This ruling is the outcome of the Summons for Revocation of Grant dated 23<sup>rd</sup> September 2009 taken out by **David Kihoro Gichuki** and **Joseph Maina Gichuki**, hereinafter referred to as the applicants whereof they applied for the following orders:

- (a) That the proceedings to obtain grant were defective in the substance as the property the subject of the estate herein does not belong to the deceased in this cause.***
- (b) That the temporary grant and the confirmation herein was obtained by fraud as we did not execute any consent to confirmation and the confirmation.***
- (c) That the temporary grant issued herein be revoked.***
- (d) That the costs of this application be borne by the respondents.***

The Summons is supported by the affidavit of **Joseph Maina Gichuki, Wanjiku Gichuki, Samuel Waithaka Gichuki** and **John Gichuki**, being the respondents herein, opposed the summons by filing the replying affidavit of Samuel Waithaka Gichuki and that of Mwangi Wambugu. When the Summons came up for hearing, learned counsels appearing in the cause recorded a consent order to have the Summons disposed of by affidavit evidence and written submissions.

I have considered the grounds set out on the face of the Summons and the facts deponed in the affidavits filed for and against the application. I have further taken into account the rival submissions. It is not in dispute that the applicants herein are the sons of Wanjiku Gichuki, the 1<sup>st</sup> Respondent and brothers to Samuel Waithaka Gichuki and John Kariuki, the 2<sup>nd</sup> and 3<sup>rd</sup> respondents. From the affidavit evidence tendered, it is clear that these proceedings relate to the Estate of Kingori Wangombe Kihoro, deceased,

alias Kihoro Wangombe, the husband of the late Hannah Njeri Kingori. The deceaseds were not blessed with children. It also comes out clearly from those affidavits that the only asset of the Estate was a parcel of land known as **L.R. NO. OTHAYA/IHURIRIO/195**. Hannah Njeri Kingori, deceased, who was one of the administrators of the Estate of Kingori Wangombe Kihoro, deceased, was given half share of the aforesaid land. She decided to bequeath her entitlement to the sons of Wanjiku Gichuki namely John Kariuki and Samuel Waithaka Gichuki. The aforesaid land measured approximately 5.2 acres. It is also apparent from the material placed before this court that the current application was only filed after the death of Hannah Njeri Kingori, deceased. The affidavit evidence also confirm that the Estate has been fully distributed and each of the beneficiaries given their own portion of land. I am also satisfied that the Applicants herein gave their consent by signing the necessary consent. In the final analysis, it is apparent that the Summons for Revocation of Grant dated 23<sup>rd</sup> September 2009 lacks merit. The same is dismissed. Since the dispute involves members of the same family, I direct that each meets his or her own costs.

***Dated and delivered at Nyeri this 14<sup>th</sup> day of October 2011.***

**J. K. SERGON**  
**JUDGE**

In open court in the presence of Mr. Ndirangu for the Respondent and Mr. Nderi for the Applicant.