



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**Succession Cause 650 of 2001**

**JOHN GIKANDI MAGONDU MWARA.....PETITIONER/1<sup>ST</sup> RESPONDENT**

**-versus-**

**LOISE WANGARI MAGONDU.....PETITIONER/APPLICANT**

**WILSON MACHARIA MAGONDU KIAMA alias**

**WILSON KABURI MAGONDU.....PROTESTOR/2<sup>ND</sup> RESPONDENT**

**R U L I N G**

The grant of Letters of Administration Intestate in respect of the Estate of Francis Magondu Githinji Mwara, deceased, was made to Loise Wangari Magondu and John Gikandi Magondu on 3<sup>rd</sup> July, 2002. Loise Wangari Magondu is now before this court vide the application dated 1<sup>st</sup> September, 2009 seeking for the following orders:

1. *That the grant of Letters of Administration to Loise Wangari Magondu and John Gikandi Magondu, the Applicant and the 1<sup>st</sup> Respondent herein (the administrators), made on the 3<sup>rd</sup> day of July 2002, be revoked by this Honourable Court and a grant of Letters of Administration be issued to the Applicant solely.*
2. *That this Honourable Court do issue an order of rectification of the registers directing that the registration of the transfer of Title Nos. Nanyuki/Marura Block II (Kariunga)/263, Nanyuki/Marura Block II (Kariunga)/264, Magutu Gatei/330, Naromoru/Naromoru Kieni East Block 1/307, Naromoru/Naromoru Block 1/Kieni East/868 from the name Francis Magondu Githinji (deceased) to the Administrators be cancelled, so that the proprietorship of the said Titles reverts to Francis Magondu Githinji Mwara (deceased).*
3. *That the 1<sup>st</sup> Respondent be ordered to refund to the estate account No.0040101358196, in the names of the Administrators, held with Equity Bank Limited Karatina Branch, the sum of Kshs.181,148.10, plus interest thereon at court rates, from the respective dates of withdrawal from the said account to the date of payment.*
4. *That the costs of this application be borne by the 1<sup>st</sup> Respondent.*

It is alleged that John Gikandi Magondu, the Petitioner/Respondent without the concurrence of Loise Wangari Magondu the Petitioner/Applicant and even before the grant has been confirmed transferred the deceased's parcels of land known as Title No. Magutu Gatei:/330, Naromoru/Naromoru Kieni East Block 1/307, Naromoru/Naromoru Block 1/Kieni East 868, Nanyuki/Marura Block II (Kariunga)/263, Nanyuki/Marura Block II (Kariunga)/264 to the names of the Petitioners. It is also alleged that the Respondent has been withdrawing money for his personal use from the deceased's bank account. It is further alleged that the Respondent has involved the estate into unnecessary litigation.

The Respondent on his part has alleged that the applicant has filed the aforesaid application in bad faith with the sole intention of blocking the confirmation of the grant. The Respondent alleged that whatever he has been accused of having breached were committed with the consent and knowledge of the Application.

I have carefully considered the material placed before me. Nearly all the allegations leveled against the 1<sup>st</sup> Respondent have not

been denied by the 1<sup>st</sup> Respondent. The most serious allegation is that the assets of the deceased's estate have been transmitted and registered in the joint names of the Applicant and the 1<sup>st</sup> Respondent even before the grant has been confirmed. It is obvious that the Respondent's actions contravened the provisions of **Section 55(1)** of the **Law of Succession Act**. That section clearly outlawed the distribution and or division of any capital assets of the deceased before the confirmation of grant. The 1<sup>st</sup> Respondent has therefore not been diligent in administering the estate. Consequently, whatever he has done must be reversed to protect the estate from being damaged and wasted by a reckless administrator. I find the summons dated 1<sup>st</sup> September, 2009 to be well founded. It is allowed as prayed.

*Dated and delivered this 28<sup>th</sup> day of May, 2010.*

**J. K. SERGON**

**JUDGE**