



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

**Succession Cause 22 of 1995**

**DANIEL KIOGORA MUGAMBI ..... PETITIONER**

**VERSUS**

**SESARI GATOBU M'MUGAMBI ..... APPLICANT**

**JUDGMENT**

Daniel Kiogora Mugambi petitioned for grant of letters of administration intestate in this matter on 19<sup>th</sup> January 1995. he listed the beneficiaries in his petition who included his mother, wife of the deceased and his (Kiogora's) son. In hearing the application for revocation dated 23<sup>rd</sup> May 2007, amended on 4<sup>th</sup> June 2009, it was submitted from the bar that one of those beneficiaries listed as sons of deceased was a grandson of the deceased. The application before court was filed by Sesari Gatobu M'Mugambi. In his application he says he is the son of the deceased and was not consulted by Kiogora when this succession was filed. He described Kiogora as his younger brother. That when Kiogora distributed this estate he failed to distribute to their mother who is still alive and also failed to distribute to him part of the estate. The applicant annexed a green card showing the property of the deceased namely, *Abothuguchi/U/Kaongo/1050* which was sub divided by Kiogora the petitioner into parcels number 1620 to 1624. Parcel numbers 1620, 1622 and 1624 are registered in the names of the petitioner. The others are registered in the names of third parties. When the application for revocation came for hearing, the petitioner had been served but he failed to attend court. It was not until after the hearing through a further affidavit filed with the leave of the court that the court realized that there were third parties who are the registered owners of those other parcels of land and who ought to be given an opportunity to be heard. The law is however clear that the petitioner should have obtained the consent of the other beneficiaries before filing this petition. This is to be found in Rule 7 (7) of the Probate and Administration Rules which provides as follows:-

***“7. (7) Where a person who is not a person in the order of preference set out in section 66 of the Act seeks a grant of administration intestate he shall before the making of the grant furnish to the court such information as the court may require to enable to exercise its discretion under that section and shall also satisfy the court that every person having a prior preference to a grant by virtue of that section has-***

- (a) renounced his right generally to apply for a grant; or***
- (b) consented in writing to the making of the grant to the applicant; or***
- (c) been issued with a citation calling upon him either to renounce such right or to apply for a grant.”***

That being so, the court grants the following orders:-

1. *The grant issued and confirmed on 21<sup>st</sup> January 1998 and rectified on 28<sup>th</sup> May 2002 is hereby revoked.*
2. *The court orders that a fresh grant to be issued to Sesari Gatobu M'Mugambi and because of the age of this matter, leave is hereby granted for that grant to be confirmed before the expiry 6 months period.*
3. *Notice shall be served upon Samuel Kiogora Mugambi the registered owner of Abothuguchi/U/Kiango/621 and upon Zacharia Muthiora Mugambi the registered owner of Abothuguchi/u Kiango/1623 for them to show cause why the titles issued to them should not be cancelled. That notice shall be served by Sesari Gatobu M'Mugambi and for that purpose, at the reading of this judgment, a date will be given when those persons will appear to show cause.*
4. *The court will address the issue of costs when final orders are given after the third parties have shown cause.*

Dated and delivered at Meru this 7<sup>th</sup> day of May 2010.

**MARY KASANGO**  
**JUDGE**