



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**SUCCESSION CAUSE NO. 300 OF 2002**  
**IN THE MATTER OF THE ESTATE OF MUSOMBA KIOKO (DECEASED)**

1. MUTHUKA MUNUVE
2. JONATHAN KIETI MUSOMBA
3. KILONZO MUSOMBA
4. SAMUEL MUTINDA MUSOMBA ..... OBJECTORS

**VERSUS**

**BEATRICE KATHINI KIILU ..... PETITIONER/ADMINISTRATRIX**

**AND**

**FRANCIS MUTULA MUTISO ..... INTERESTED PARTY**

**RULING**

On 24<sup>th</sup> May 2010, the court was addressed regarding the effect of **section 93 (1)** of the **Law of Succession Act, Cap 160** in respect to some properties which had comprised part of the estate of the Deceased herein, and which were transferred to the Interested Party by the Administratrix of the estate upon confirmation of the grant. What was coming up for hearing on that day were two applications as follows:-

1. **Summons dated 26<sup>th</sup> August 2005** for revocation of grant.
2. **Summons dated 18<sup>th</sup> April 2008** for preservation of assets of the estate pending disposal of the summons for revocation.

On 16<sup>th</sup> November 2009 it was directed by the court, in effect, that both applications be heard by way of oral evidence so that the Objectors' and also the Interested Party's claims in the estate can be determined. As it happened, these two applications were not heard as directed on account of the submissions made on section 93 (1) aforesaid, on a rather impromptu basis. The submissions made were not put into proper perspective in relation to the two applications, particularly the summons for revocation of grant. It appears that the point raised was intended to be a preliminary objection to the summons for the revocation of grant, in so far as the properties already transferred to the Interested Party are concerned.

It seems to me that this is a serious issue that ought to be properly addressed by the learned counsels, preferably upon a formal application being made in that behalf. I therefore direct that an appropriate application be made regarding the properties transferred to the Interested Party after confirmation of grant, so that the court can be properly addressed in order to make an informed determination thereon. Let learned counsels therefore do the needful. In the meantime this matter will be stood over generally with costs in the cause. It is so ordered.

**DATED THIS 21<sup>ST</sup> DAY OF OCTOBER 2010**

**H. P. G. WAWERU**  
**JUDGE**

**DELIVERED THIS 22ND DAY OF OCTOBER, 2010**