



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**SUCCESSION CAUSE NO. 270 OF 2008**

**JOHANA MURIUGA .....**  
**.....DECEASED**  
**AND**  
**ELIJAH NYAGA JOHANA.....**  
**.....PETITIONER**  
**VERSUS**  
**JACOB NYAGA JOHANA.....**  
**.....1<sup>ST</sup> APPLICANT**  
**MICERATA MIIRU.....**  
**.....2<sup>ND</sup> APPLICANT**

**J U D G M E N T**

The Applicant herein has moved this court for the revocation of the Grant in succession Cause No. 95 of 2005 at Runyenjes Court which grant was issued on 11.12.06 and confirmed on 28.06.07.

He has given 3 grounds on the face of his summons for revocation. The same is supported by his affidavit sworn on 29.07.08. The Respondent who is the petitioner responded by way of a replying affidavit dated 16.10.08 in which he has controverted all the applicants averments. The matter proceeded by way of Affidavit evidence. Counsel for the Applicant also filed written submissions but counsel for the Respondent did not file any.

I have considered the application along with the documents before me which include the original file from Runyenjes Court. I will allow this summons on one ground only i.e. ground 3. Ground 3 is to the effect that the Resident Magistrate had no jurisdiction to entertain the succession cause under Section 48 of the law of Succession Act as the Gross value of the deceased’s estate exceeded 100,000 Sh. I have confirmed from the documents filed by the Respondent/petitioner in the trial court that he gave the value of the property at 150,000Sh. This clearly means from the word go that the Resident Magistrate lacked the jurisdiction to handle the matter as his pecuniary jurisdiction is pegged at 100,000 Sh. The Grant was therefore issued without jurisdiction and the same is therefore void *ab initio*. I need not go into the details of the other grounds. The application succeeds and the said Grant of letters of administration is hereby annulled with each party being ordered to bear its own costs.

I would nonetheless wish to state that, the deceased herein died in 1972 which was long before the enactment of the law of Succession Act.

His estate was and still is subject to his customary law which I believe is Kiambu. Under that customary law, women let alone married ones like the ones listed here are not entitled to inherit any land belonging to their father. That is the law and so the petitioner and Applicants sisters are not entitled to any share of the land in question. So the fact that they were left out by the petitioner would not have been a reason for the revocation of the grant.

They should also be aware that even if the Grant is reissued by a court with jurisdiction, the sisters will get absolutely nothing from the deceased's estate.

**W. KARANJA**

**JUDGE**

Delivered, signed and dated at Embu this 25<sup>th</sup> day of November 2010  
**In presence of:- Mr. Kahara for Mr. Kathungu for Applicant.**