



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KITALE**  
**SUCCESSION CAUSE 82 OF 2005**  
**IN THE MATTER OF THE ESTATE OF:**  
**KEFA OMAKADA OKARIGODI (DECEASED)**  
**AND**  
**DAVID OJAKA OMAKADA.....PETITIONER**

**REASONS FOR RULING**

On the 30<sup>th</sup> day of July 2009, I heard the applicant's application dated 20<sup>th</sup> February, 2008 by way of Summons for Revocation or annulment of the grant issued on 19<sup>th</sup> September 2005 and at the end of it all revoked the said grant. I reserved my reasons for doing so which I now give out. But first the background.

By an application by way of summons for revocation or annulment of grant dated 20<sup>th</sup> February 2008, the applicant Milika Nanjala Kefa, seeks orders that the grant issued to David Ojaka Omakada on 19<sup>th</sup> September 2005 by this honourable court be revoked and/or annulled on the grounds:

1. That the grant was obtained fraudulently.
2. That the grant was obtained secretly.
3. That the grant was obtained by means of untrue allegations of facts.

The application is supported by the annexed affidavit of Milika Nanjala Kefa sworn on the 20<sup>th</sup> day of February 2008.

On behalf of the applicant, it was argued that she is the widow of the late Kefa Omakada Okarigodi. That the respondent is a mere dependant who has no authority from herself or the children to apply for letters of administration. The application was thus made fraudulently by making a false statement. The signatures purporting to be the respondent's were forged. The applicant did not consent to the respondent being issued with the grant. As the widow, she has the first priority to apply for grant over everybody else.

On behalf of the respondent, it was contended that the applicant is in deed the widow. That she was not consulted when the respondent made the application. In effect she did not consent to the application and the eventual order.

I have carefully scanned through the application and considered the same together with all the authorities on the point.

Section 66 of the Law of Succession Act (Cap 160) Laws of Kenya lists in a hierarchical order the persons to whom a grant of representation in intestacy can be made. It suffices to say that the surviving spouse has priority in applying for and being granted letters of administration. **(See In the matter of the Estate of Murathe Marciria (deceased) Nairobi H.C.C.C No.857/2005 (Koome J).**

Ranking in second in priority are the surviving children of the deceased. The respondent is merely a dependant. Hence he comes a distant third. For that reason the application succeeds.

Those are the reasons why I revoked the grant issued on 19<sup>th</sup> September 2005.

Dated and delivered at Kitale this 8<sup>th</sup> day of...**OCTOBER** 2009.

**N.R.O. OMBIJA**  
**JUDGE**

**Mr Chebii for Objector**

**N/A for Respondent**