



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT KITALE  
Succession Cause 21 of 2006**

**EREKAI EPETET  
LEMUYA.....  
....DECEASED.**

**A  
N  
D**

**MARY LOKUSI  
NASIKE )  
JULIAS LOKUSI  
ALIMAMOI ) .....  
.....APPLICANTS.**

**R U L I N G.**

By an application by way of summons for revocation of grant or annulment of grant, dated 15<sup>th</sup> February, 2008, the applicant seeks orders that:-

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

The application is predicated upon the annexed affidavit of Magret Arupe Ekutut sworn on 15<sup>th</sup> February, 2008.

On behalf of the applicant, it was argued that the late Eregai Epetet Lemuya who died on 28<sup>th</sup> April, 2005 was her legal husband.

The 1<sup>st</sup> respondent is a wife to the 2<sup>nd</sup> respondent herein as opposed to the deceased.

Moses Erekai is a son to the respondent herein as opposed to the deceased.

Rebecca Erekai Lemuya is the applicant's daughter with the deceased.

In the premises the respondents herein have no right to administer the estate of the applicant's late husband. That the Probate and Administration cause was filed secretly without her knowledge. She did not therefore consent to the making of the application for grant.

On behalf of the respondent, it was conceded that the petitioner is a brother to the deceased. That he took out the letters of administration by-passing the lawful wife and children of the deceased.

Section 66 of the Law of Succession Act (Cap 160)

Laws of Kenya lists in a hierarchical order the persons to whom 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 Marathi Mwaria (deceased) Nairobi HCCC No. 875/2005 (KOOME – J)**)

Ranking in second priority are the surviving children of the deceased. The respondents herein are merely dependants. Hence they come a distant third. For those reasons this application succeeds. Accordingly, the grant is revoked and/or annulled.

Dated and delivered at Kitale this 12<sup>th</sup> day of November, 2009.

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

