



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISII
Miscellaneous Civil Application 123 of 2009**

COLLETER ADHIAMBO OCHIENGAPPLICANT

AND

ALICE AKOTH OCHUOGA.....1ST RESPONDENT

PATRICK C. AHENDA.....2ND RESPONDENT

R U L I N G

The deceased *Rusina Owuor Owidi* died intestate on 11.10.2994 leaving a parcel of land registration number *Kabondo/Kasewe/1580* measuring 47 hectares. There is confirmed grant issued to 1 st respondent who was the daughter-in-law to the deceased. The respondent has since sold 0.95 hectares of the land to the 2 nd respondent. This application was brought to revoke the grant to the 1 st respondent. The applicant claims that on 15.12.2000 the deceased sold to her (25x100) feet of the land following which she put up permanent residence thereon. She depones this fact was known to the 1st respondent and yet she did not invite her to the succession proceedings. The applicant deponed that the deceased died before transferring the portion to her.

The applicant does not indicate that application was made by the deceased to the Land Control Board or that sanction of the Board to the transaction was obtained. The position in law would be that, without such consent, the transaction became null and void and cannot be basis for the present application. The applicant was not entitled to benefit from the deceased's estate, and neither was she supposed to be cited. The complaint that the court that confirmed the grant lacked jurisdiction because the value of the land was in excess of Kshs. 100,000/= is not legally tenable there being no valuation report. These matters were raised in the Grounds of Opposition and are with merit.

The application is consequently dismissed with costs.

Dated, signed and delivered at Kisii this 10th day of November, 2009

A.O.MUCHELULE

JUDGE

10/11/2009

10/11/2009

Before A.O.Muchelule-J

Court clerk-Mongare

Mr. Masese for Mr. Minda for applicant

Court: Ruling in open court.

A.O.MUCHELULE

JUDGE

10/11/2009