



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT MOMBASA**

**Misc Civ Case 18 of 2003**

**GLADYS CIAMBAKA NYAGA.....APPLICANT**

**VERSUS**

**KATHUNI NYAGA.....RESPONDENT**

**JUDGMENT**

Application dated 3/4/2003 is for the orders of Revocation of grant issued by this court on 24/7/2002.

On the grounds that the grant was obtained fraudulently and by concealment of something material to the case, the purported petitioner not actual petitioner. That the administrator is a son of the deceased. That the deceased was survived by his widow Gladys Ciambaka (now deceased) and her signature was forged by Kathuni Nyaga. The application is supported by affidavit of the applicant who (then alive) appears to have been confused as how the petition of grant was made. The record shows that the petition was filed on 3/11/1997 by the widow.

Later on, on 11/9/2000 Respondent applied to be substituted in place of the widow his mother orders were issued to him on 20/1/2000 and he applied for confirmation of the grant.

On 24/7/2002 the grant was confirmed and all beneficiaries were allocated 2 acres each including the widow. After some years on 23/2/2004 the widow petitioner, applicant died and the matter is in the hands of the present substituted applicant, Mike Nyaga. When the dispute came before the court it became clear that the deceased's beneficiaries were not in agreement on distribution. Evidence is that Samuel Mutegi mentioned is not a beneficiary but a person who advanced money to the widow. Then there is dispute as to status of Mugendi Nyaga mentioned. The evidence shows that he was a child left at home by the daughter of deceased. The protesters evidence shows serious disagreements among the members of the family mainly because of inclusion of persons who are not beneficiaries of the deceased.

Upon considering all evidence and the record placed before the court, it is my finding that there is no ground to warrant the revocation of the grant. However the distribution is not in accordance with the law. The persons who have advanced money to the estate are not beneficiaries but creditors. The interests of creditors must be sorted out by administrator before distribution. The beneficiaries are the children of deceased firstly because widow is dead. Grandchild can inherit the share of the deceased survivor. Therefore Mugendi can inherit share of his mother.

I therefore set aside the distribution as certified and order the administrator to redistribute the deceased estate according to law.

It is so ordered. No order as to costs.

Dated this 11<sup>th</sup> March, 2008.

**J. N. KHAMINWA**

**JUDGE**

**11/3/2008**

**Khaminwa – Judge**

**Njue – Clerk**

**Parties present**

Read in open court.

**J. N. KHAMINWA**

**JUDGE**