



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Succession Cause 3135 of 2001**

**IN THE MATTER OF THE ESTATE OF PAUL MBUGUA KAGUCIA – DECEASED**

**RULING**

The parties herein are family members. The objector is the wife of the late brother of the deceased. The Administrators are the wife of the Deceased's son and his grand son.

In the affidavit in support of Petition for letters of administration intestate, the administrator have mentioned all the beneficiaries including the objector who is described as 70 years of age. I do agree that once the objector has been mentioned as beneficiary and she has not really contested her consent in the petition, what she in earnest, is complaining is the division of the property as is ordered in certificate of confirmation. That is the reason learned counsel appearing for her conceded during his submissions that there is no reason for revoking the grant if the only issue is the sub-division and the court can direct the redistribution and consequently the property to be resurveyed.

From the evidence adduced by the Administrator, the first Administrator testified that the objector appended her signature before her and a chief and then the form for consent which was so signed was handed over to their lawyers to be submitted. I can thus clearly deduce that the signature of the objector was not appended before the Commissioner for Oaths as is purported to have been presented before the court.

In the past, I have shown my disgust at the practice undertaken by the Commissioners for Oaths to append their signatures on the documents which are presented to them filled in and signed. It is not only an irregularity, but is totally unethical and bordering to the commission of an offence.

I shall, in the premises, find the said consent not validly obtained and accept the objector's case that the property in question was held in trust by the deceased for the late husband of the objector in equal shares.

I thus direct that the property be thus redistributed with the objector getting half share thereof.

There shall be thus resurvey of the property in accordance with the above order, costs whereof be bone by the parties equally.

The parties are family members, I shall thus not make any order on costs.

Dated and signed at Nairobi this 26<sup>th</sup> June, 2008.

**K.H. RAWAL**

**JUDGE**

**26.6.08**

