



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

**Misc 7 of 2005**

**GIBSON WANJOHI NGUNDO.....1<sup>ST</sup> APPLICANT**

**KARIUKI NGUNDO.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**WACHIRA KINGURU.....RESPONDENT**

**JUDGMENT**

Before the court is an application to a null or revoke a grant brought under section 48 and 76 of Succession Act and Rule 44 of P& A rules.

The ground for making application is that :-

The Magistrate who heard the case *Principal Magistrate's Succ Cause No.4/1995 at Murang'a* had no jurisdiction the assets of the estate being valued at 2 million Kenya Shillings and that the proceedings to obtain grant was defective in substance and that the grant was obtained by making of a false statement or by concealment to court of material fact to the case. The affidavit in support shows that the Respondent showed a will written by deceased attached written in Kikuyu language not in court language. That the document surfaced upon filing *Succession No. 4 of 1985 at Murang'a*. It is shown that the document was invalid see Paragraph 12 of the supporting affidavit. It is also shown that the fingerprints experts evidence was not satisfactory. It is also a ground of applicant that all the alleged witnesses to the will were dead and therefore could not give evidence.

I have perused the record and I see two attesting witnesses to the will give evidence and the Trial Magistrate gave judgment on the strength of on finding that there was a valid will. This judgment has not been appealed against it is valid. On the issue of jurisdiction the applicants have not proved the value of the estate only allegation that it is 2 million the issue was not raised in Subordinate court. In matters of Succession High Court is empowered to hear appeal from all decision of subordinate courts. See section 50 (1) Succession Act also empowers the court to revoke any grant at any time under section 76 thereof. The condition to be satisfied are set out thereon.

I do not find that the applicant has proved the grounds the grounds set out under that Act. I therefore dismiss the application with no order as to costs.

Dated this 18<sup>th</sup> January, 2007.

**J. N. KHAMINWA**

**JUDGE**

**18/1/2007**

**Khaminwa –Judge**

**Njue – Court Clerk**

**Mr. Mutahi for Applicants**

**Respondent present**

**Ruling read in open court.**

**J. N. KHAMINWA**

**JUDGE**