



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**

**Succession Cause 2884 of 2004**

**JANE NDUTA MURIITHI..... PETITIONER/RESPONDENT**

**VERSUS**

**JOSPHAT MUTIRIMU THIRINJA..... OBJECTOR/APPLICANT**

**RULING**

On 21.12.05 the objector/applicant filed summons for revocation of grant of letters of administration intestate of the estate of EDWARD MURIUNGI THIRINJA issued on 06.01.05 to the petitioner/respondent and Rispah Wanjiru Kimura. The grounds for the revocation sought were basically that not all potential beneficiaries to, including the deceased's parents, and that not all assets of the deceased had been disclosed. The objector/applicant also challenged the petitioner's/respondent's claim to be the deceased's widow.

On 28.02.06 a document entitled 'CONSENT ORDER' was filed in this Court vide which the objector/applicant and petitioner/respondent Jane Nduta Muriithi appeared to have agreed on some form of settlement of the controversy surrounding distribution of the deceased's estate. According to the 'Consent' the grant of letters of administration issued to petitioner/respondent Jane Nduta Muriithi and Rispah Wanjiru Kimura was to be revoked and a fresh grant issued to petitioner/respondent JANE NDUTA MSURIITHI, M'THIRINJA MUCEKE and objector/applicant JOSPHAT MUTIRIMU THIRINJA. The 'Consent' also addressed the issue of distribution of the deceased's estate whereby not only were Jane Nduta Muriithi and her two children to benefit but Thirinja Muceke, Penina Ciori Mberia and Josphat M'thirinja were also to benefit. The 'Consent' indicates that it was drawn by Mithega & Co. Advocates of Nairobi and witnessed by O.H. Momanyi Advocate & Commissioner for Oaths also of Nairobi. However, controversy seems to have erupted about the 'Consent'.

On 16.05.07 Mr G.R. Kariuki, counsel for petitioners Jane Nduta Muriithi and Rispah Wanjiru Kimura as well as Miss F.M. Githinji, counsel for the objector/applicant appeared and addressed this Court regarding the 'Consent'.

Petitioners' counsel essentially took the position that the objector's claim lay in an application for dependancy and not in application for revocation of the grant to Jane Nduta Muriithi and Rispah Wanjiru Kimura and that the summons for revocation should be dismissed. It is noted in the latter regard that petitioner Jane Nduta Muriithi who is the only one petitioner that signed the 'Consent' stated at paragraph 19 of her replying affidavit sworn on 22.09.06 that she had signed the 'Consent' in the objector's/applicant's advocate's office under duress, i.e. she disowns the 'Consent'.

On the other hand, under the 'Consent' the objector/applicant appears to have abandoned his total rejection of the claim by petitioner/respondent Jane Nduta Muriithi to have been the deceased's wife and conceded to the sharing of the deceased's estate between her and her children on one hand, and the deceased's blood relatives on the other.

The parties' respective advocates agreed to proceed in this matter on the basis of affidavit evidence on record and submissions thereon. Petitioner/respondent Jane Nduta Muriithi's affidavit sworn on 22.09.06 contains an allegation that she signed the 'Consent' under duress but her deposition does not identify the person or persons who perpetrated the duress. It is important for the perpetrator of the duress to be specified so that his or her response to the allegation can be obtained to assist the Court towards

determining the fate of the 'Consent'.

I order:-

- a) That petitioner Jane Nduta Muriithi do swear a further affidavit identifying the alleged perpetrator or perpetrators of duress upon her and specifying the nature of the duress.
- b) That petitioner Jane Nduta Muriithi do file and serve the further affidavit referred to in (a) above upon the alleged perpetrator of the duress upon her within 14 days.
- c) That this matter be mentioned on 27.06.07 for further orders and that petitioner Jane Nduta Muriithi do serve the alleged perpetrator of the duress in question with mention notice.

Orders accordingly.

**Delivered at Nairobi this 8<sup>th</sup> day of June, 2007.**

B.P. KUBO

JUDGE