



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

**Civil Misc Appli 71 of 2004**

**CHARLES MUSASIA KULALI .....PETITIONER/  
RESPONDENT**

**VERSUS**

**REPHA INDAKALA KULALI**

**JULIAN KULALI**

**EDWIN OKWENDO KULALI.....OBJECTORS/  
APPLICANTS**

**RULING**

Section 48(1) as read with section 76 of the Law of Succession Act, Chapter 160 of the laws of Kenya (*“the Act”*) explicitly divests the Resident Magistrate courts of jurisdiction to entertain or determine any dispute relating to revocation or annulment of a Grant. That seems to be the reason why Messrs Repha I. Kulali, Julian Kulali and Edwin O. Kulali moved to this court on 23.9.04 seeking in their application dated 23-9-04 revocation of the Letters of Administration issued by the Magistrate Court in Vihiga District Magistrate Court Succession Cause No. 11 of 1976 relating to the estate of the late Francis Kulali which comprises the land known as E/Bunyore/Ebusamia/1852. (“the said land.”)

In the affidavit sworn by Edwin Okwendo Kulali in support of the application, the deponent averred that he is the son of the deceased and that Charles Musasia Kulali the Petitioner/Respondent in whose name the Resident Magistrate Court ordered the deceased’s said land to be registered is his only brother and that his mother Repha Indakala Kulali is the 1<sup>st</sup> Objector/Applicant while Julian Kulali, the 2<sup>nd</sup> applicant is his only sister.

The grounds on which the application was made included concealment from the magistrate court of heirs to the estate, and false representation that one Zakayo Kwendo is a son of the deceased when he is not.

In short, the deceased, Francis Kulali died, according to the applicants, leaving a widow, Repha Indakala Kulali, and one daughter, Julian Kulali and two sons, Edwin Okwendo Kulali and Charles Musasia Kulali. His estate comprised the said land.

The application first came up for hearing before me on 25-4-05 when it was adjourned at the behest of the Respondent, Charles Musasia Kulali. When it came up for hearing again on 20-6-05, adjournment was again sought by the Respondent but was declined. The application proceeded to hearing. The Respondent who all along was represented by counsel and never complained of not having been served with the application never filed any replying affidavit. When the hearing of the application was reached and the case called out at 3.40 p.m. on 20.6.05, the Respondent and his counsel, Mr. Mango, were absent. It therefore proceeded to hearing ex-parte.

I have given due consideration to the averments contained in the application which I have perused and the submissions made by Mr. Samba, learned counsel for the Applicants. The allegations made that there was concealment of the names of the applicants as the heirs and the fraudulent misrepresentation that the

Respondent was the only heir resulted ostensibly in the lower court ordering that the latter be registered as the heir to the estate of the deceased. These allegations were not controverted. On their strength, I am persuaded that the criteria set out in the provisions of section 76 (b) and (c) of the Law of Succession Act was satisfied. In the circumstances I allow the application and hereby revoke the Grant of Letters of Administration issued to Charles Musasia Kulali in Vihiga District Magistrate Court Succession Case No. 11 of 1976. I further order cancellation of the registration of Charles Musasia Kulali as the heir to the estate of the deceased, Francis Kulali. I also order that the parcel of land No. East/Bunyore/Ebusamia/1852 shall be restored in the name of the deceased Francis Kulali and all the dealings registered subsequent to his death in the proprietorship and encumbrances sections be cancelled.

An application for the grant of Letters of Administration Intestate may be made by the Applicants and the Respondent or any of them. Each party shall bear its own costs.

*Dated, signed and delivered at Kakamega this 5<sup>th</sup> day of May, 2006.*

**G. B. M. KARIUKI**

**J U D G E**