



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

**NDANU KIVONDO**

**Prob & Admin Cause 3 of 1991**

**ESTATE OF KIVONDO MBITHI KIVINDU**

**AND**

**NDANU KIVONDO**

**SYONGOMBE KIVONDO ..... APPLICANTS**

**R U L I N G**

Kivondo Mbithi Kivindu died on 19/11/1989. On 3/1/1991 the two widows of the deceased Ndanu Kivondo and Syongombe Kivondo petitioned this court for grant of letters of administration. Interim grant was issued on 15/3/91 and was confirmed on 10/4/92. By application dated 16/12/02 an application was filed by Kakonzi Advocates on behalf of Syongombe Kivondo under Section 81 of Law Succession Act and Rules 49 and 73 P & A Rules seeking orders that since her co-wife co-administrator Ndanu Kivondo was now deceased and she was too old to administer the estate, she wanted the certificate of grant be cancelled and that the two petitioners be replaced with Benson Nzuki Ngao and Nelson Muema who were their grandsons respectively. That application was granted and grant was confirmed in the names of Benson Nzuki Nzau and Nelson Muema Wambua on 17/1/03. It is against that grant that the objector filed the application dated 3/9/04 seeking that the grant of letters confirmed on 17/1/03 be annulled or revoked because the grant was confirmed fraudulently by concealing from court. That time only asset to be administered belongs to the objector, that the beneficiaries did not disclose the assets of the deceased, that the proceedings in which the grant was obtained were defective; that the administrators had failed to administer the estate and especially Muputi/Kiima Kimwe /19 to the purchasers.

The objector Wambua Mbithi swore an affidavit in which he depones that the deceased was his brother, the 1st petitioner Nelson Muema is his son and 2nd petitioner Benson Nzuki Ngao is a grandson of the deceased. He depones further that the land Muputi/Kiima Kimwer/19 is his property and that it had been wrongly numbered on the index map and was later rectified and that it never belonged to the deceased and that he sold the portion to several people and when he applied to subdivide it he found that the petitioners had obtained letters of administration for the deceased and that the property was registered in their names. The petitioners have failed to transfer the said portions to the respective purchasers and are instead selling them and that in any case the administrators never sought consent of the beneficiaries to admistrate the estate.

The petitioner/Respondents were represented by Masara Advocate. He was aware of the application coming up for hearing. He had been present in court on 28/1/05 when the matter was adjourned to 22/4/05. Counsel was present when the matter was confirmed for hearing but when the matter was called out later, he was no where in court. No papers had so far been filed in response to this application for revocation. The applicants deponed that the grant was confirmed fraudulently therefore not be challenged. I have seen the letter from the Land Registrar and proceedings annexed showing that there had been .....of Muputi/Kiima Kimwe/19 which was in issue and that the same should be amended to conform with what is on the ground. The letter was dated as far back as 5/9/86. This is even before the confirmation of grant. I do note from the record that beneficiaries of the deceased's estate never attended court at any one given time for confirmation. May be if they had attended, this fact would have revealed. Since there was no objection to the application and there is evidence of there having been a mistake, the court will not hesitate to grant the orders prayed and order the grant confirmed on 17/1/03

revoked and should be brought back to court for cancellation.

Dated at Machakos this 10th day of May 2005

Read and delivered in the presence of

**R.V. WENDOH**

**JUDGE**