



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

**Succession Cause 568 of 1999**

**IN THE MATTER OF THE ESTATE OF KINGORI WANGOMBE KIHORO alias**

**KIHORO WAMBEMBE – DECEASED**

**DAVID KIHORO GICHUKI )**

**JOSEPH MAINA GICHUKI ) ..... APPLICANTS**

**VERSUS**

**WANJIKU GICHUKI )**

**JOHN KARIUKI )**

**SAMUEL WAITHAKA ) ..... RESPONDENTS**

**R U L I N G**

On the 15th December 2000 this court (Hon. Juma J) confirmed a temporary Grant of letters of administration intestate for the estate of Kingori Wangombe Kihoro alias Kihoro Wangombe (deceased) which had been issued to Hannah Njeri Kingori and Wanjiku Gichuki.

On the 26th March 2001, Joseph Maina Gichuki and David Kihoro Gichuki filed a summons for revocation of grant under rule 44(1). The application does not state which rules were referred to but I understand them to refer to the Probate and Administration Rules. The application sought to revoke or annul the grant issued on 20th July 2000 on the grounds that the same was defective in substance as it would result in the applicants being disinherited. It was also alleged that the grant was obtained fraudulently by the making of false representation and statements, and concealment of material facts.

The application came before Juma J on 11th April 2002 and directions were given for the dispute to be heard by way of oral evidence on a date to be fixed in the Registry. Thereafter the matter came up before the court on 4th December 2002 and 21st October 2003 but on both occasions did not proceed on the former occasion because the applicant's were not present and on the latter occasion because it could not be reached by the court. On both occasions hearing dates had been taken by the advocate for the respondents and hearing notices served on the applicants who duly attended court. On 24th March 2004, the matter having again been fixed for hearing by the advocate for the Respondent, the advocate for the Respondent raised a preliminary objection to the hearing of the application on the ground that it sought the annulment of a non-existent grant as no grant had been issued to the Respondents on 20th July 2000 and that the application was therefore defective. A temporary grant of letters of administration intestate had been issued to Hannah Njeri Kingori and Wanjiku Gichuki on 20th July 2000, and no grant had therefore been issued on that date to Wanjiku Gichuki, John Kariuki and Samuel Waitthaka as alleged in paragraph 1 of the applicant's supporting affidavit. The court therefore upheld the preliminary objection and adjourned the hearing of the application to enable the applicants file a supplementary affidavit (or indeed apply to amend the application). The applicants not having taken any further action in the matter the Respondent on 16th September 2004 applied for the dismissal of the application for revocation filed by the applicants on 27th day of April 2001 for want of prosecution. The grounds being that the applicants are abusing the process of the court by failing to take action in the prosecution of their application. This time round, though the applicants were served, none attended court.

Unfortunately however the Respondents have fallen into the same pit that the applicants fell into. For there is no application for revocation which was filed by the applicants on 27th day of April 2001. The applicants application dated 26th March 2001 was actually filed on 27th March 2001. I do therefore reject the Respondents application as being defective. I make no orders as to costs.

*Dated signed and delivered this 4th day of August 2005.*

**H. M. OKWENGU**

**JUDGE**