



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

**FAMILY DIVISION**

**PROBATE AND ADMINISTRATION CAUSE NO. 863 OF 1991**

**IN THE MATTER OF ESTATE OF NJAU NDUNGI (DECEASED)**

**RULING**

Nelson Kungu Ndungi and Francis Mami Ndungi, both brothers of the deceased Njau Ndungi, objected to the Grant of Letters of Administration issued to James Kungu Njau, Josephat Ikonya Njau and Benard Kiongo Njau, all sons of the deceased.

In support of summons for revocation, Nelson Kungu Ndungi, averred that the parcel of land known as NDUMBERI/TINGANGA/478 was their late father's land and not the deceased's land. That they subdivided the land amongst them as brothers and started cultivating it from the time of independence which would be 1963, to date. That their deceased's brother, being the eldest had land registered in his name to hold in trust for the others.

That the deceased Njau Ndungi had 2 wives Damaris Wanjiku, who is still alive and Wambui, who is now deceased.

The objectors are not opposed to Damaris remaining and continuing to live on her husband's land. The objectors claimed to be beneficiaries to the deceased's estate in that the deceased held land for them in trust.

Damaris Wanjiku, was the deceased's second wife. He described the petitioners as the deceased's sons by the 1st wife.

Damaris actually obtained a Grant of Letters of Administration to the deceased's estate in the Chief Magistrate's court, Kiambu on 14th October, 1993, and a certificate of confirmation issued thereof on 1st July, 1994. She was not aware that the present petitioners had already been issued with a Grant of Letters of Administration, and had caused Land Parcel No. NDUMBERI/TINGANGA/478, transferred to them as well as her own son.

Her affidavit supported the affidavit of the objectors whom she averred were the rightful heirs of the deceased, together with herself

. Benard the petitioner submitting in court on behalf of the other petitioners that land No.478 does not exist anymore, the same was subdivided between 1992 – 1993 after they had obtained the grant of letters of administration. The petitioner swore a further affidavit and annexed copies of the 3 titles issued after the subdivision of NDUMBERI/TINGANGA/1907 registered in the name of Mami Njau Ndungi, son of the deceased by Hanna Wambui. Then there was another subdivision L.R. NDUMBERI/TINGANGA/1908 registered in the name of Peter Kungu Njau, son of the deceased by Damaris Wanjiku and L.R NDUMBERI/TINGANGA/1909 registered in the names of Benard Kiongo Njau, James Kungu Njau and Josephat Ikonya Njau, sons of deceased by Hannah Wambui, will share.

Benard confirmed that the grant of letters of administration obtained from Kiambu was not utilized because the grant from the High Court came out first was taken to the Lands Office in Kiambu and utilized by having the land subdivided.

Benard submitted further that Damaris, the deceased's second wife as well as the 2 of the deceased's brother do not live on the suit premises.

The submissions of Benard on behalf of the other petitioners have shown quite clearly that the parcel of Land known as NDUMBERI/TINGANGA/478, does not exist the same having been subdivided amongst the sons of the deceased by his two wives, Hannah and Damaris, and new title deeds issued. That being so, I find that there is nothing to subdivide because the land does not exist anymore. The objection by way of summons for revocation or annulment filed by Damaris and Francis Mami and Nelson Kungu cannot succeed and I proceed to dismiss it with costs.

Having dismissed the objection brought by Damaris and her 2 brother in law, I now move to revoke the grant of letters of administration and the certificate of confirmation issued to Damaris Wanjiku Njau, Francis Mami Ndungi and Nelson Kungu Ndungi.

I have moved to revoke this grant out of my own motion under Sect. 76 of the Succession Act, because it was meant for the subdivision of NDUMBERI/TINGANGA/478 which had already been subdivided and transferred by the time this grant was obtained in Kiambu Chief Magistrate's court.

These are the orders of the court.

Dated at Nairobi this 9th day of April, 2002.

**JOYCE ALUOCH**

**HIGH COURT JUDGE**