

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

SUCCESSION CAUSE NO.124 OF 1998

IN THE MATTER OF THE ESTATE OF THE LATE

PETER SABIRI MABAKHE (DECEASED)

DIANA RACHEL KAVEDZA.....APPLICANT

VERSES

ANDREW KAKAI SABIRI.....RESPONDENT

RULING

1. By her application dated 29th July 2020 the applicant prays that the Exparte orders made on 7th October 1997 which ordered land parcel number 424 Kamukuywa scheme to be registered in the name of the respondent be set aside and the application dated 18th September 1997 be set down for hearing.
2. The said application was not opposed since despite being served as per the affidavit of service dated 17th October 2020, the respondent did not appear before this court nor his representative.
3. The application is meritorious for the simple reason that there are weighty issues including the transfer of the suit land which was registered in the name of the late Beatrice Ngaira. According to the applicant she was never notified of the date of the said application and that in any case the lower court did not have the requisite jurisdiction to have ordered the cancellation of the title.
4. In the premises, the application dated 29th July 2020 is allowed, the application dated 18th September 1997 be and is hereby set down for hearing. Parties shall proceed to take an appropriate date at the registry.
5. Costs shall await the outcome of the said application.

Delivered, Signed and Dated at Kitale this 11th day of December 2020.

H. K. CHEMITEI

JUDGE