



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

SUCCESSION CAUSE NO. 420 OF 2013

IN THE MATTER OF THE ESTATE OF RHODA NDINI NZIOKA – DECEASED

IN THE MATTER OF THE PETITIONER BY MOSES KYALO NDINI

AND

IN THE MATTER OF AN OBJECTION BY LOIS JOHN KILONZO

JUDGEMENT

Applicant's Case

1. By a petition filed herein on 12th June, 2013, the Petitioner herein **Moses Kyalo Ndini**, petitioned for the Grant of Letters of Administration intestate of the estate of **Rhoda Ndini Nzioka** – the Deceased, who passed away on 19th April, 2013. According to the said petition, the deceased owned 4 immovable properties, a motor vehicle, had a savings account at Standard Chartered Bank, Machakos Branch and was a member of Konza Ranching and Farming Co-operative Society Ltd. Copies of the Title Deeds for Muputi/Kiima-Kimwe/3388, Muputi/Kiima-Kimwe/1861, Machakos Konza North Block I/1429 and Certificate of official search for Muputi/Kiima-Kimwe/59 were exhibited showing that Muputi/Kiima-Kimwe/59 and Muputi/Kiima-Kimwe/1861 as being registered in the names of the Objector, **Lois John Kilonzo** while Muputi/Kiima-Kimwe/3388 and Machakos Konza North Block I/1429 being registered in the names of the deceased, **Rhoda Ndini Nzioka**. According to the death certificate exhibited at the time of the deceased's death, she was 84 years old.

Objector's Case

2. On 10th July, 2013, the Objector herein, **Lois John Kilonzo**, entered appearance in the matter and on the same day filed an affidavit of objection to the Grant of Letters of Administration.

3. According to the said affidavit, the deceased and the Objector were both children of the late **Nzioka Kitwa Kikwa** and **Sera Ndete Nzioka** and that the deceased and the Objector were the last surviving children of their parents. However the deceased was neither married nor had children and the Objector was the only beneficiary left. According to the Objector the deceased did not die intestate as she made a will date 1st February, 2005 a copy of which was exhibited. The Objector however averred that she was only became aware of these proceedings when the Petitioner herein mentioned the same in Civil Suit No. 24 of 2013 as her consent was never sought. It was disclosed that there were two suits pending before this Court in respect of the deceased's estate being Civil Suit No. 24 of 2013 and Civil Suit No. 279 of 2010.

4. According to the Objector, contrary to the Petitioner's claim, the Petitioner is neither an adopted son of the deceased nor beneficiary to her estate since the alleged adoption of the Petitioner was not legal as the law does not allow a person above the age of 65 years to adopt, yet the deceased was 97 years at the time she signed the alleged affidavit of adoption. Further, the law does not allow for adoption of adults.

5. It was further contended that under the Kenyan law it is only the High Court that has the power to make adoption orders and that no such orders were made in respect of the Petitioner herein. According to the Objector, at the time of the alleged adoption, the Petitioner was married with a child hence it was legally impossible for **Rodah Ndini Nzioka** to adopt him.

6. The Objector further averred that the application for grant was made in secrecy as no one had been informed. In addition the petition failed to include other properties issued to the deceased by Konza Ranching and Farming Cooperative Society Limited and these included Agricultural Plot No. 1123 measuring 10.78 ha near Katumaini Farm and Commercial Land No. 740 measuring 2 ha near Mombasa Road (Kwa Mautio).

7. According to the Objector, the Petitioner herein was seeking to fraudulently benefit from the deceased's estate.

8. In her answer to the petition, the Objector claimed that the petition was made by a person who is not related to the deceased in any way and that the Objector was the executor of the deceased's will and that this fact was concealed from the Court.
9. Apart from the objection, the Objector also cross-petitioned for the grant of probate of the deceased's will.
10. On 6th October, 2016, the Court directed that the Petition be canvassed by way of viva voce evidence and that the parties to file witness statements and documents.
11. In her statement the Objector reiterate her above averments that the deceased was her biological sister. She admitted that she knew the Petitioner but denied that the Petitioner was her deceased's sister's son. It was disclosed that the deceased used to work with Development Community and later retired to farming. She however acquired Plot No. Maputi/Kiima Kimwe/1814, Membership No. 1408 Konza Ranching and Farming Co-operative Society, Plot No. Machakos/Konza North Block 1/1429, Motor Vehicle Reg. No. KAD 824V Toyota Saloon, Savings Account No. [particulars withheld] at Standard Chartered Bank, Machakos Branch and Motor Vehicle Reg. No. KUS 03 Peugeot 204 Saloon Car. However, Muputi/Kiima-Kimwe/59 and Muputi/Kiima-Kimwe/1861 were registered in the names of the Objector. It was however disclosed that the Membership No. 1408 Konza Ranching and Farming Co-operative Society gave rise to Plot Nos. 1123 measuring 10.7 ha and No. 740 measuring 2 ha situated near Katumaini farm and Mombasa Road (Kwa Mautio) respectively.
12. The Objector averred that the deceased left her as the executor of her will and bequeathed to her the properties detailed in the will as well as other properties acquired after the making of the will.
13. It was the Objector's case that she came to know the Petitioner, **Moses Kyalo**, when he and his wife and a child was brought by a pastor to rent a house where the deceased had rental houses but insisted that the Petitioner was not the deceased's son. In the Objector's view the affidavit relied upon by the Petitioner purporting that the Petitioner was a son of the deceased was a forgery as the deceased was seriously ill then and could not have referred to herself in the affidavit as a single mother. It was the Objector's case that the Petitioner had not adduced evidence to prove that he was an adopted son of the deceased.
14. It was disclosed that from the Petitioner's documents, the Objector came to learn that Maputi/Kiima-Kimwe/1814 had been sub-divided into Maputi/Kiima-Kimwe/3387 and Maputi/Kiima-Kimwe/3388. According to the Objector, the deceased was seriously sick and had confusion and she used to take care of the deceased by taking her to the Hospital and would at times stay with her on admission to the Hospital and pay her hospital bills.
15. In her oral evidence, the Objector reiterated the foregoing and disclosed that she was not working as she had retired. According to her the deceased was her biological sister from the same mother and same father and while the deceased was the 5th born, she was the 11th born in a family of 11 siblings. According to her the relationship between her and the deceased was like daughter and mother respectively.
16. It was disclosed that in the year 2001, the deceased went to the Chief and said that since she was not feeling well she would like all her properties to be given to the Objector. The said letter dated 28th March, 2001 was given to the Objector and was exhibited as document 3 to her petition. In execution thereof, the deceased placed her thumbprint thereon as she could not write due to arthritis and high blood pressure. The said document was witnessed by two people – **Benson Mulei Kilonzo** and **Geoffrey Mulumba**, the Chief.
17. It was further averred that in the year 2002, the deceased also said that she would give the Objector her plots as a gift for what the Objector had done to her. The decease accordingly went to Wambua Advocates and paid for them as a result of which the Objector was given the title deeds. It was further averred that in 2005, the decease wanted he Chief's letter to have a backup she went to Wambua Advocates who drew a will. According to the Objector she went to the said Advocates unaccompanied by the Objector and on her own accord. In the said will the deceased appointed the Objector as her executor and trustee and gave the Objector all her properties save for the one's which she had already given the Objector and which were already in the Objector's name. The will was similarly executed by a thumbprint and attested by two witnesses. A copy of the will, according to the Objector was handed over to her.
18. It was averred by the Objector that she knew the Petitioner, **Moses Kyalo** in 2009 during his pre-wedding when he wanted assistance from the deceased during a church fundraising. The Objector however insisted that he was a son of the deceased. It was the Objector's evidence that according to the Petitioner's affidavit evidence, he was staying in an orphan's home since birth until 8 years. It was averred that the deceased was unable to give birth due to her physiological make-up and died without giving birth and did not adopt the Petitioner. By the time of her death, it was stated that the deceased was 100 years old hence could not legally adopt a child, as she was over 65 years while the Petitioner was over 18 years after being raised in an orphanage. As the Petitioner was an adult, he could not be adopted. To the Objector he was unaware of any court order confirming the Petitioner's adoption by the deceased.
19. As regards the will dated 28th May, 2010 exhibited to the Petitioner's documents, it was averred by the Objector that by 2010 the deceased's mental status was not okay and the Objector was not aware of the will.
20. It was disclosed that the deceased was admitted to Nairobi Hospital in 2003 while very sick and the Objector helped her in paying the bills. Accordingly, the deceased chose her as her next of kin. In that capacity she used to be sent the bills. It was averred that the deceased stayed with the Petitioner for 4 years before she died.
21. As regards the Petitioner's witnesses, the Objector stated that she first knew **Augustine Sane Katuti** in 2009 when he was the Master of Ceremonies in the Petitioner's pre-wedding but was not part of the deceased's household.
22. Accordingly the Objector prayed that she be granted letters of administration in respect of the deceased's estate.
23. In cross-examination, the Objector stated that she did not have the deceased's death certificate but denied that the same indicated the age

of the deceased as 84 years. Muputi/Kiima-Kimwe/59 and Muputi/Kiima-Kimwe/1861. She admitted that the deceased filed a case being No. 279 of 2010 when the Petitioner came in in respect of plot nos. Maputi/Kiima-Kimwe/59 and 1861. It was her evidence that the deceased testified in the said case that the Objector had fraudulently changed the titles of the two plots. The Objector however insisted that the deceased was alive when the said titles were changed but had been confused by the Petitioner. Referred to the will executed before the Chief, the Objector insisted that according to the will the properties of the deceased were to pass to the deceased and died with the said will.

24. It was her evidence that Maputi/Kiima-Kimwe/59 and 1861 were registered in her names on 11th April, 2002 when the deceased was still alive. It was her evidence that it was the deceased who gave her the will in which she gave her the remaining properties after having gifted her other properties. She however insisted that the deceased was not well by the time she wrote her will on 20th May, 2010 as she was then under treatment. The Objector however had no evidence to prove that the deceased was unwell in 2010 as the documents presented to the Court regarding the deceased's health were for 2003 and the deceased died in 2013. She however insisted that the properties were bequeathed to her in gratitude for the assistance she had extended to the deceased though the hospital receipts did not bear her name as she was not the patient. While the Objector testified that she removed the money from her bank account, she had no evidence to prove this. Referred to the letter dated 25th June, 2010, document 8 in the Petitioner's documents, the objector explained that the same was after they had quarrelled and the Petitioner had confused the deceased. While the deceased talked about her son, it was the Objector's evidence that the Petitioner was not her adopted son. However from the time of the fundraising for his wedding in 2009, it was disclosed that the Petitioner rented the deceased's house where he was staying as a tenant though it was the Objector's case that the deceased never used to give her tenants receipts.

25. According to the Objector she filed a case against the Petitioner being case no. 24 of 2013 in which she was seeking to have the Petitioner evicted from the deceased's home but the court granted stay pending the determination of the case. The Objector emphasised that the deceased did not know what she was doing when she wrote the will in 2010 as she was old and sick hence chose a stranger who was a neighbour and who she used to see every day.

26. The Objector averred that **Geoffrey James Mulimba** was her nephew who witnessed the wills of 2010 and 2005. According to the Objector he was a Chief while **James Katiti** was the master of ceremonies at the Petitioner's pre-wedding and at the deceased's funeral. He was also a witness to the deceased will of 2010.

27. It was disclosed by the Objector that the deceased had land at Konza Ranching Co-op Society where she was buried which was transferred to the Petitioner. In the Petitioner's evidence the deceased was taken there in a wheel chair. While the Objector agreed that the 2010 will purported to revoke the earlier wills, she was not aware that the law permits a person to bequeath their property to anyone. She however insisted that she had been given the property.

28. As in re-examination about the death certificate, the witness averred that the same was grabbed from the Objector by the Petitioner at the mortuary purporting to be the deceased's relative and changed the age of the deceased to a lower figure yet the deceased was 100 years.

29. According to the Objector it was the deceased who went to the Advocates and had Maputi/Kiima-Kimwe/59 and 1861 registered in the names of the Objector.

30. It was the Objector's evidence that she had not given any evidence in case 279 of 2010. She however insisted that there was no ruling or judgement in which it was found that she had been charged with any offence or fraud. Similarly she had never been charged with any offence of fraud.

31. It was the Objector's case that in the year 2010 her sister, the deceased was a round 93 years during which time she seemed confused and very worried. She was in a wheel chair and would cry often.

The Petitioner's Case

32. According to the Petitioner, subsequent to the filing of these proceedings, it came to his attention that the deceased left a Will dated 28th May, 2010 in which the deceased appointed him as the Executor. The said Will was drawn by the law firm of L. M. Wambua & Co. Advocates and was duly witnessed by two witnesses as per the law to wit; Mr Geoffrey James Mulumba of ID N. [particulars withheld] and James A. Katiti of ID No. [particulars withheld].

33. According to the Petitioner, the deceased filed Machakos High Court Civil Suit No. 24 of 2013 against the Petitioner seeking injunction restraining the Petitioner from collecting rent from houses on Plot Maputi/Kiima-Kimwe/59 and 1861 but the Court declined to grant orders that the Petitioner vacates the house he was occupying in Plot No. Maputi/Kiima-Kimwe/59. It was the Petitioner's case that the deceased's Will stated that her properties and riches would upon her death vest absolutely in the Petitioner. However the Membership No. 1408 Konza Ranching and Farming C-operative Society Ltd had been changed in his names prior to the deceased's death while the commercial plot number 740 near Mombasa Road does not form part of the Estate of the deceased since the same had been hanged into the Petitioner's names prior to the death of the deceased. According to the Petitioner, the Objector was neither a dependant of the deceased nor could she be a beneficiary of the deceased's estate by virtue of the written will.

34. There was also an affidavit sworn by **Augustine James Katiti** who deposed that he had known the deceased for 10 years prior to the year 2010 as they used to attend the same church.

35. According to the deponent, on 28th May, 2010, the deceased asked him to accompany her to the offices of L. M. Wambua & Co. Advocates and upon arrival they found **Mr Larry Wambua Advocate** who informed them that he had written a Will and that they were required to witness the same. Accordingly, the deponent's name and that of another witness were inserted in the Will and the contents thereof read to all of them that is the deponent, **Mr Geoffrey James Mulumba** and **Roda Nдини Nzioka** after which the Advocate read the same to them and requested the deceased to sign the same followed by the said Geoffrey and the deponent. Thereafter the Advocate signed and stamped the same and they left the offices.

36. In his testimony, the Petitioner reiterated the foregoing and disclosed that he was aware that the deceased wrote a Will on 28th May, 2010 in which he was appointed executor and in which the deceased revoked all her previous wills. It was his evidence that the Objector had filed a case against the deceased being Civil Suit No. 279 of 200 in which the deceased testified. The Objector also filed a suit being No. 24 of 2013 against the Petitioner but the Court directed that the Petitioner stays on the deceased's until determination of the suit. It was reiterated that Konza Ranching and Farming C-operative Society Ltd shares were transferred to the Petitioner vide a letter dated 17th July, 2013 by the deceased before the deceased died and that the deceased was 84 years when she died. At the time of her death, it was averred that the Petitioner was staying with the deceased. According to the Petitioner in 2010 when the deceased wrote the will she was not sick and was physically fit. As regards the properties registered in the names of the Objector, it was averred that the deceased went to Court to have their titles cancelled. The Petitioner denied that the Hospital receipts were paid for by the Objector and denied that the Will was a forgery as alleged.

37. The Petitioner case was also supported by the testimony of **Augustine James Katiti** who reiterated the contents of his affidavit. He clarified that he knew **Geoffrey James Mulumba** as the Area Chief. According to him, at the time of the signing of the will on 28th May, 2010, the deceased was mentally and physically fit and was a member of the same church with the witness.

38. It is important to note that neither the Petitioner nor his witness was cross-examined by the Objector as the Objector was not present when they testified.

Determination

39. I have considered the pleadings, the evidence and the submissions filed.

40. It is clear that these proceedings were commenced as a Petition for Grant of Letters of Administration Intestate. However on 14th March, 2010, this Court granted leave to the Petitioner to file a petition for grant with will annexed. Accordingly, on 21st February, 2017, the Petitioner filed a Petition for Probate. Section 53 of the **Law of Succession Act** (hereinafter referred to as "the Act") provides as hereunder:

A court may—

(a) where a deceased person is proved (whether by production of a will or an authenticated copy thereof or by oral evidence of its contents) to have left a valid will, grant, in respect of all property to which such will applies, either—

(i) probate of the will to one or more of the executors named therein; or

(ii) if there is no proving executor, letters of administration with the will annexed; and

(b) if and so far as there may be intestacy, grant letters of administration in respect of the intestate estate.

41. In **Re Estate of Ngetich [2003] KLR 84 Nambuye, J** held that:

"The procedure for applying for letters of administration with will annexed and that of intestacy are distinct and one cannot be substituted for another. The fact that a wrong procedure has been used in bringing the will to court does not mean that it has to be ignored. It has to be looked at and when it is looked at the court has to decide whether the same is to be upheld... Section 26 of the Law of Succession Act (Cap 160) Laws of Kenya stipulates that a will is not absolute and where there is a contention the Court can interfere and make provision for a dependant left out of inheritance and in exercising those powers the Court has to bear in mind the provisions of section 28 of the Act which are (1) the nature of the deceased's property (2) any past, present or future capital or income from any of the source of the dependant (3) the existing and future means and needs of the dependant (4) whether the deceased had made any advancement or other gift to the dependant during his lifetime (5) the conduct of the dependant in relation to the deceased (6) the situation and circumstances of the deceased's other dependants and beneficiaries under any will and (7) the general circumstances of the case including so far as can be ascertained the testators reason for not making provision for the dependant."

42. Therefore whereas, the Petitioner herein ought to have moved the Court by a Petition for Probate, as leave was granted by the Court for him to move by way of Grant of Letters with Will annexed I am not prepared to disallow the Petition simply on that basis.

43. The Petitioner herein has relied on a Will drawn by the deceased. Whereas the Objector has also relied on a Will by the deceased, the Will which the Objector relied upon was a prior document to that relied upon by the Petitioner. Section 17 of the **Law of Succession Act** provides that:

A will may be revoked or altered by the maker of it at any time when he is competent to dispose of his free property by will.

44. According to the deceased's will dated 28th May, 2010, the deceased revoked all her previous wills and codicils relating to her Estate and stated the said Will to be her last Will. Accordingly, unless the said Will was successfully challenged, it is deemed to have revoked the earlier Will dated 1st February, 2005. This must be so because section 5(1) of the Act states that:

Subject to the provisions of this Part and Part III, every person who is of sound mind and not a minor may dispose of all or any of his free property by will, and may thereby make any disposition by reference to any secular or religious law that he chooses.

45. The Objector however contended that by the time the deceased wrote the Will of 28th May, 2010 she was ailing and was confused by the Petitioner. Section 5(3) and (4) of the Act, however provide that:

(3) Any person making or purporting to make a will shall be deemed to be of sound mind for the purpose of this section unless he is at the time of executing the will, in such a state of mind, whether arising from mental or physical illness, drunkenness, or from any other cause, as not to know what he is doing.

(4) The burden of proof that a testator was, at the time he made any will, not of sound mind, shall be upon the person who so alleges.

46. There is therefore a presumption of the validity of a Will as long as it has all the ingredients of a valid Will. In **Wambui & Another vs. Gikonyo [1988] KLR 444**, it was held by Gachuhi, JA:

“As long as the document has the essential facts according to law they should be accepted as being valid wills...Even in cases where a person is very sick or mentally sick at the time of executing the will, it cannot be a ground for nullifying the will because there are lucid periods where a person becomes normal and can give instructions for writing the will.”

47. In **Apaloo**, JA’s opinion:

“The party who propounds a will must show that it is intended to be the last wishes of a competent testator and that he had a sound disposing mind and, further, that the will was executed and attested in the manner required by law. Thereafter, the burden shifts on those asserting the invalidity of the will to prove it.”

48. In this case apart from the Objector’s evidence that the deceased’s frame of mind did not permit her to make the Will, no other evidence was called to corroborate this contention. The Petitioner on the other hand testified that the deceased did not suffer any mental infirmity at the time that she drew the Will. In fact according to the witness, it was the deceased who requested him to go and witness the signing of the same in an Advocate’s office. Both the evidence of the Petitioner and the witness were never challenged as the Objector was not present when they testified in Court.

49. Similarly in **Bosa & Co. Advocates vs. Vero Nassanga & Others Kampala HCCS No. 315 of 1992** it was held that:

“In deciding upon the capacity of the testator to make a will, it is the soundness of mind, and not the particular state of the bodily health, that is to be attended to... The law is that once it is proved that a Will has been executed with due solemnities by a person of competent understanding and apparently a free agent, the burden of proving that it was executed under undue influence rests on the party who alleges it. That burden is not discharged by showing merely that the beneficiary had the power unduly to overbear the will of the testator; it must be shown that in the particular case, the power has been exercised, and that the execution of the Will obtained thereby... Proof of motive and opportunity for the exercise of such influence is required, but the existence of such coupled with the fact that the person who has such motive and opportunity has benefited by the Will to the exclusion of others is not sufficient proof of undue influence... The influence which will set aside a Will must amount to force and coercion destroying free agency; it must not be the influence of affection or attachment; it must not be the mere desire for gratifying the wishes of another, for that would be a very strong ground in support of a testamentary act; further, there must be proof that the act was obtained by his coercion; by opportunity which could not be resisted; that it was done merely for the sake of peace, so that the motive was tantamount to force or fear... Undue influence, in order to render a will void, must be an influence which can justly be described by a person looking at the matter judicially to have the execution of a paper pretending to express a testator’s mind, but which really does not express his mind, but something else which he did not really mean.”

50. I have considered the evidence presented before this Court and I am not satisfied that at the time the deceased signed the Will dated 28th May, 2010, she was of unsound mind. I am also not satisfied that the Petitioner unduly influenced the deceased to make the Will in the manner she did.

51. As to whether the Petitioner was a son to the deceased, nothing turns thereon unless the provisions of section 26 of the Act could be successfully invoked. The said section provides that:

Where a person dies after the commencement of this Act, and so far as succession to his property is governed by the provisions of this Act, then on the application by or on behalf of a dependant, the court may, if it is of the opinion that the disposition of the deceased’s estate effected by his will, or by gift in contemplation of death, or the law relating to intestacy, or the combination of the will, gift and law, is not such as to make reasonable provision for that dependant, order that such reasonable provision as the court thinks fit shall be made for that dependant out of the deceased’s net estate.

52. In other words it must be proved that the disposition of the deceased’s estate is not such as to make reasonable provision for the Objector, if the Objector is a dependant. It is not in doubt that the Objector being a sister of the deceased falls within the definition of the dependant. However, in deciding whether reasonable provision for the Objector, section 28 of the Act requires this Court:

In considering whether any order should be made under this Part, and if so what order, the court shall have regard to—:

(a) the nature and amount of the deceased’s property;

(b) any past, present or future capital or income from any source of the defendant;

(c) the existing and future means and needs of the dependant;

(d) whether the deceased had made any advancement or other gift to the dependant during his lifetime;

(e) the conduct of the dependant in relation to the deceased;

(f) the situation and circumstances of the deceased's other dependants and the beneficiaries under any will;

(g) the general circumstances of the case, including, so far as can be ascertained, the testator's reasons for not making provision for the dependant.

53. In this case, from the Objector's own evidence, before the deceased passed away, the deceased had already transferred to her Plot Nos. Muputi/Kiima-Kimwe/59 and Muputi/Kiima-Kimwe/1861. Therefore it is clear that, if the said transfer was voluntary and was honestly done, then the deceased had made advancements or other gifts to the Objector during her lifetime. However in this case, the Objector admitted that prior to the death of the deceased, the deceased filed a case being No. 279 of 2010 in which the deceased testified that the objector had fraudulently changed the titles of the two plots. Pleadings in respect of the said case were exhibited to prove this allegation. Apart from the said pleadings there was a letter dated 25th June, 2010 in which the deceased expressed her displeasure with the Objector's conduct. Therefore from the deceased's point of view, the Objector's relationship in relation to the deceased was anything but cordial. Further, it seems that the deceased had reasons for not making further provision for the Objector in her subsequent Will. This Court therefore has no justifiable reason to interfere with the manner in which the deceased disposed of her property before her death.

54. As regards Plot Nos. Muputi/Kiima-Kimwe/59 and Muputi/Kiima-Kimwe/1861, it is not in dispute that as at the time of the death of the deceased the same were in the names of the Objector. Whether the registration of the same in the Objector's name was fraudulent or not is not a matter that can be determined in these proceedings. In fact prior to her death the deceased had instituted legal proceedings seeking that determination but died before a determination was made in respect thereof. This was the position of **Nyamu, J** (as he then was) in **Stephen Waithaka Gatumbi vs. Frumence Kariuki Murui Nairobi HCCC NO. 1757 of 2001** where he held that issues of fraud and forgery cannot in law be raised in a succession cause.

55. In the premises Grant of Letters of Administration with Will annexed for the Estate of **Rodah Ndini Nzioka** is hereby issued to **Moses Kyalo Ndini** in respect of the deceased's properties other than Plot Nos. Muputi/Kiima-Kimwe/59 and Muputi/Kiima-Kimwe/1861.

56. There will be no order as to costs of these proceedings.

57. Orders accordingly.

Judgement read, signed and delivered in open Court at Machakos this 16th day of July, 2018.

G V ODUNGA

JUDGE

Delivered in the presence of:

Mr Kinyanjui fo the Objector/Cross-Petitioner

Mr Kituku for Mr Uvyu for the Petitioner

CA Geoffrey