



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**SUCCESSION CAUSE NO. 33 OF 1995**

**IN THE MATTER OF THE ESTATE OF GEORGE KIVINDU SANGA**  
**ELIZABETH MUKONYO KIVINDU ..... ADMINISTRATOR/APPLICANT**

**VERSUS**

**SERAH MBULWA KIVINDU ..... RESPONDENT**

**R U L I N G**

1. The application dated 10/12/2012 seeks the following orders:-

1. "(Spent).
2. **THAT the Respondent be restrained from encroaching, alienating or in any other manner dealing with any part of the Estate of George Kivindu Sanga (Deceased) pending hearing and determination of the Respondent's Summons for Revocation of Grant filed on 21<sup>st</sup> June 2012.**
3. **THAT conservatory orders be granted on all that property comprising of the estate declared to be the estate of George Kivindu Sanga (Deceased) pending hearing and determination of the Respondent's summons for Revocation of Grant filed on 21<sup>st</sup> June 2012.**
4. **THAT the costs of this application be borne by the Respondent."**

2. The grant of Letters of Administration intestate was made to the Applicant on 5/5/1995. The Summons for Confirmation filed herein remains pending. The Respondent filed a Summons for Revocation/Annulment which is yet to be heard.

3. The Applicant's complaint is that the Respondent has encroached on the land parcel No. **Makueni/Unoa/31** which is part of the estate of the deceased. That the Respondent has carried out ploughing on the said land and is also putting up a construction therein.

4. The application is opposed. It is the Respondent's contention that she is a co-wife to the Applicant. That she got married to the deceased under **Kamba Customary Law** in year 1960. That she was given the land in question by the deceased in the year 1962. The Respondent has further averred that she and her children are entitled to half share of the estate of the deceased.

5. The Applicant filed a further affidavit and denied that the Respondent is her co-wife. It is further averred that the Respondent's children were not sired by the deceased.

6. During the hearing of the application, the parties relied on their affidavit evidence.

7. I have considered the said affidavit evidence. The main issue herein is whether the Respondent is a widow of the deceased and therefore whether together with her children they are beneficiaries in the estate of the deceased. The Applicant has denied that the Respondent is her co-wife. At this stage of the case, it is not possible for the court to prefer the affidavit evidence of any of the parties to the other. The Summons for revocation ought to be heard first so that the issue whether the Respondent is a widow of the deceased can be settled first.

8. For the above stated reasons, I only allow prayer No. 3 of the application. Costs in cause.

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**B. THURANIRA JADEN**

**JUDGE**

**Dated and delivered at Machakos this 5<sup>th</sup> day of February 2015.**

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**B. THURANIRA JADEN**

**JUDGE**