



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MILIMANI**

**SUCC CAUSE NO: 204 OF 1997**

**IN THE MATTER OF THE ESTATE OF NGUGI KAMAU – (DECEASED)**

**RULING**

The summons dated 7th November 2012 seeks dismissal of the summons for revocation dated 16th February 2001 for want of prosecution. It also seeks that the entry or change of ownership of Kiambaa/Kihara/382 done after the demise of the deceased be revoked and the administrators be registered as trustees thereof as per the confirmed grant dated 30th April 1998. It is also prayed that the applicants in respect of the revocation application be condemned to pay the costs of this application.

The application is supported by the affidavit of Daniel Kamau Ngugi, one of the co-administrators. He avers that the land in question, Kiambaa/Kihara/382, belonged to the deceased, but the applicants in the application dated 16th February 2001 caused it to be registered in their names as co-owners after the death of the deceased. They did so under a court order, which has subsequently been declared null by this court in this cause in a ruling delivered on 24th July 2008.

In reply, Harrison Muita Kariuki, one of the applicants in the application dated 16th February 2001, has deponed, in an affidavit sworn on 18th February 2013, that he and his associates have not been indolent. He pleads that the grant was obtained fraudulently as it was not disclosed in the petition that Kiambaa/Kihara/382 was registered in their names.

I have carefully studied the papers filed herein, inclusive of the written submissions by counsel. I have paid particular attention to the ruling delivered on 24th July 2008. I note that the said ruling has not been appealed against. In nullifying the order which the said applicants used to have the property transferred to their names, Rawal J., as she then was, said unequivocally:

***“... the learned Senior Resident Magistrate therefore did not have jurisdiction to enter judgment in terms of the award of panel of elders.”***

In the face of this I do not think the said applicants can get far with their revocation application. I note that it has been pending since 2001 and no plausible reasons have been given for its non- prosecution. The application dated 7th November 2012 is merited. I allow it. I award costs of the application to the estate.

**DATED, SIGNED and DELIVERED at NAIROBI this 5th DAY OF July, 2013.**

**W. M. MUSYOKA**

**JUDGE**