



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE 134 OF 2009**

**IN THE MATTER OF THE ESTATE OF JOSEPH WAFULA KHAOYA( DECEASED)**

**1. SAMSON KIBOI KISEMBE.....1<sup>ST</sup>  
PETITIONER**

**2. ANDREW MUSE KIBOI.....2<sup>ND</sup>  
PETITIONER**

**~VRS~**

**1. WYCLIFFE MULUNDA KHAOYA.....1<sup>ST</sup>  
APPLICANT**

**2. DOUGLAS SHIKUKU KHAOYA.....2<sup>ND</sup>  
APPLICANT**

**3. BENSON WANAMBISI KHAOYA.....3<sup>RD</sup>  
APPLICANT**

**RULING**

The Respondents were on 21/1/2010 given a grant of letters of administration in respect of the estate of the deceased Joseph Wafula Khaoya. This followed a citation for the Applicants to apply for letters to which they did not respond. When the Respondents applied for the grant they indicated the estate of the deceased to be comprised of land parcel no.E. Bukusu/N.Sang'alo/968. In the present application for revocation or annulment of the grant it has been sworn that this suit land had before the deceased's death been subdivided into E. Bukusu/N. Sang'alo/4368 in the name of Khaoya E.R.S.F Primary School and E. Bukusu/N. Sang'alo/4367 left in the name of the deceased. Title for E. Bukusu/N. Sang'alo/968 was consequently closed. The court was consequently misled into thinking that the title for E. Bukusu/N. Sang'alo/968 existed and that the suit land belonged to the deceased. The Respondent could not petition the court to inherit a non-existent parcel, or a parcel (4368) that did not belong to the deceased.

It is for these reasons that the application dated 12/3/2010 is allowed with costs.

**Dated, signed and delivered at Bungoma this 12<sup>th</sup> day of July 2012.**

**A. O. MUCHELULE  
JUDGE**