

REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
SUCCESSION CAUSE NO. 684 OF 2009

IN THE MATTER OF THE ESTATE OF MASAYA NDOLO {DECEASED}

AND

IN THE MATTER OF APPLICATION FOR REVOCATION OF GRANT OF LETTERS OF ADMINISTRATION INTESTATE ISSUED TO COSMAS MUSYOKA MASAYA BY HON. J. KARANJA -SRM ON 28 June 2010

AND

IN THE MATTER OF APPLICATION OF
NDUKU MUSEMBI MASAYA.....OBJECTOR/ APPLICANT
VERSUS

COSMAS MUSYOKA MASAYA PETITIONER/ RESPONDENT

RULING

1. Nduku Musembi Masaya (the Applicant) filed an application dated 5th March, 2025 seeking setting aside the Letters of administration and certificate of grant issued of representation made to Cosmas Musyoka Masaya on 30th June 2010 and for cancellation of the Land Register at Makueni of the title number MAKUENI/KYALUMA/200 and MAKUENI/KYALUMA/201 issued to the Petitioner and the be reverted back to the Estate of the deceased, MASAYA NDOLO original owner, MAKUENI/KYALUMA/64
2. The application is supported by an affidavit sworn by the Applicant on 5th March, 2025. The Application is based on the grounds on the face of the application that the letters of administration and the certificate of confirmation of grant were secretly and fraudulently obtained without disclosing the rightful beneficiaries to the estate and in the mode of distribution.

3. The that the above-named deceased MASAYA NDOLO died on 1st March 1998 intestate leaving COSMUS MUSYOKA MASAYA, MUSEMBI MASAYA NDOLO (deceased) and NDUKU MUSEMBI MASAYA the Applicant herein and the only surviving spouse.
4. That the Applicant came to be aware of the frauds on the deceased's estate land known as MAKUENI/KYALUMA/64 having been demarcated without her inclusion and unfairly.
5. That the entire succession cause is full of falsehoods and false signatures as the Applicant was shocked that the entire property is registered to the Petitioner who failed to involve her as a rightful beneficiary entitled to a share of the estate.
6. That it is worth noting that the Petitioner took advantage of the illiteracy and lack of financial muscles of the Applicant to disinherit her of her husband's estate.
7. That it is strange how the estate land MAKUENI/KYALUMA/64 was subdivided into MAKUENI/KYALUMA/200 and MAKUENI/KYALUMA/201 and transferred to the Petitioner and one **Francis Nduti Mbweli** as shown in the Green Card search. The said Francis Nduti Mbweli is not a beneficiary of the deceased's estate and this raises eyebrows on how his name got to the Schedule of distribution of the estate property as shown in the Certificate of Confirmation of Grant dated 30th June 2010.
8. It is even more disheartening that the Applicant who is the wife of the deceased was completely left out and disinherited from her deceased husband's estate. Clearly the Applicant has been subjected to irreparable loss, damage, fear of being thrown out of the rightful home and destruction of the estate's only property.
9. The Applicant's counsel made oral submissions on 15/10/2025

Determination

10. I have carefully considered the application and the oral submissions of the Applicant's counsel. I have also looked at the Chief's letter dated 13/8/2009 which gave the beneficiaries as **Cosmas Musyoka Masaya** and **Musembi Masaya** as sons to the deceased. The name of the wife was given as **Muluku Masaya (Deceased)** and not **Nduku Musembi Masaya**, the Applicant herein. There is no proof at all that the Applicant was the wife of the Deceased.
11. Further, nowhere was **Francis Nduti Mbweli** shown as a beneficiary/heir to the deceased contrary to what is contained in the schedule in the Certificate of Confirmation of Grant.
12. Lastly, the Applicant's counsel informed court on the two occasions the matter came up in court on 8/7/2025 and 15/10/2025 that the Petitioner who appears in person had duly been served with the application and court attendance notices but failed to attend court and returns of service were filed. I have had the opportunity to read the Affidavits of service sworn by **Sylvester Makau, a process server** and filed in the matter as well as the Mention and hearing notices and I have established that the same referred to **Teresia Nduku** as the Applicant and not the Applicant herein Nduku Musembi Masaya and this is likely to have occasioned confusion to the Petitioner/Respondent as to which parties the matter relates to, hence the failure to appropriately appear and file a response.
13. Therefore, I accordingly decline to allow the application dated 5th March 2025 *ex parte* and direct that the same to be served afresh upon the Petitioner for hearing and determination on merit.
14. There shall be no orders as to costs.
15. A date to be fixed for directions on the application dated 5th March 2025

It is hereby so ordered.

RULING WRITTEN, DATED & SIGNED AT MACHAKOS THIS 4TH MARCH 2026

**NOEL I. ADAGI
JUDGE**

DELIVERED VIRTUALLY ON TEAMS AT MACHAKOS THIS 4TH MARCH 2026