



**REPUBLIC OF KENYA**

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

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 2473 OF 1999**

**IN THE MATTER OF THE ESTATE OF KARASINKA OLE SAMURIA Alias KARAZINGA SAMURIA (DECEASED)**

**SIMON KISHANTO KUDATE.....PETITIONER**

**VERSUS**

**KIPAILOI OLE MUNKA.....OBJECTOR**

**R U L I N G**

1. The application subject of this ruling is dated the 3<sup>rd</sup> of May 2020 and seeks to revoke the grant herein on grounds that the same has become useless due to subsequent circumstances.
2. The applicant states that unaware of the existence of this cause he petitioned yet for another grant in Narok C.M. Succession Cause No. 66 of 2016 which grant was issued and confirmed.
3. That in CMS.C No. 66 of 2016 the Petitioner herein filed an objection to the said grant, a ruling was given and the petitioner herein being dissatisfied with the said ruling preferred an appeal in the High Court sitting in Narok in High Court Succession Cause No. 1 of 2018.
4. This application is objected to by the Petitioner herein Simon Kishanto Kudate in his lengthy affidavit dated 14<sup>th</sup> November, 2019 wherein he explains the degree of consanguinity of each one of them with the deceased, the reasons why this matter delayed. Further he accuses the applicant herein of obtaining his grant in the lower court fraudulently and for being an opportunist.
5. Clearly the subject matter before this court, C.M. Succession Cause No. 66 of 2016 and Narok High Court Succession Cause No. 01 of 2018 is the same. Both parties are the same. Equally the Chief Magistrate's court in CMSC No. 66 of 2016 made a final decision which is now subject of an appeal.
6. Therefore the doctrine of resjudicata comes into play. A matter cannot be determined twice and this cause therefore must be terminated.
7. The Petitioner's recourse now lies in the appeal in the Narok High Court case.
8. As a point of reference this file will be transferred to the Narok High Court Succession Cause No. 1 of 2018.
9. The application succeeds with no orders as to costs.

**DATED, SIGNED and DELIVERED at NAIROBI this 22<sup>ND</sup> DAY OF OCTOBER, 2020.**

.....

**ALI-ARONI**

**JUDGE**