



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**FAMILY DIVISION**  
**SUCCESSION CAUSE NO. 1297 OF 2010**  
**IN THE MATTER OF THE ESTATE OF**  
**BONIFACE OKACH - (DECEASED)**

**FLORENCE OKACH.....1ST APPLICANT**

**GRACE ATIENO OKACH.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**WINNIE WANGOMA OKACH.....1<sup>ST</sup> RESPONDENT**

**JACK ODERA OKACH.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The bottom line is that in respect of the deceased Boniface Okach there are two parallel Succession Causes. The first was filed in 1996 It is HC Succession Case No. 1569 of 1996 at Nairobi. It was filed by the respondents who obtained a grant which was confirmed. The grant was, however, revoked at the instance of Emmanuel Okach, a beneficiary. The respondents then secretly filed a second Cause which is the instant matter. A grant was issued and was confirmed, but the applicants filed summons for the revocation of the same. The applications are pending.
2. I asked the parties to address me on the competence of the present Cause in view of the earlier. Each side filed written submissions which I have considered.
3. Where a party files a Cause knowing that he had filed a similar matter before the same Court and that the same is pending that is tantamount to playing lottery with the judicial process and is an abuse of the process of the Court. (**ASEA BROWN BOVERI LTD –V- BAWAZIR GLASS WORKS LTD[2001] 2EA 336; LEONARD ONYANCHA –V- POST BANK CREDIT LTD HCCC NO. 396 of 2000 at Kisumu**).
4. Under rule 73 of the **Probate and Administration Rules:-**

**“Nothing in these Rules shall limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”**

5. In both cases the issue in question is the administration of the estate of the deceased Boniface Okach, and the same parties are involved. The Court is being called upon to decide who will administer the estate, to identify the beneficiaries and determine their respective shares.
6. Ideally, the present Cause is an abuse of the process of the Court and should be struck out. However, in the wider interest of justice, I order the consolidation of the two causes: HC Succession Cause No. 1297 of 2010 and HC Succession Cause No. 1569 of 1996, both at Nairobi. The Causes shall be consolidated and heard together in HC Succession Cause No. 1297 of 2010 in which there are pending applications for revocation dated 1<sup>st</sup> October 2012 and 4<sup>th</sup> December 2012. The two applications shall be heard on a date to be taken at the registry on priority basis.

**DATED at NAIROBI this 22<sup>nd</sup> day of May 2015**

**A.O. MUCHELULE**

**JUDGE**

**DELIVERED at NAIROBI this 28<sup>th</sup> day of May, 2015**

**W. MUSYOKA**

**JUDGE**