

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 609 OF 2008

IN THE MATTER OF THE ESTATE OF NASON MUSEMBI MUSOMBA (DECEASED)

JOHN MUSYOKA MUSEMBI.....PETITIONER

VERSUS

DAVID MUEMA MUSEMBI.....OBJECTOR/APPLICANT

R U L I N G

1. A grant of letters of administration in respect of the Estate of **Nason Musembi Musoma** was issued to **John Musyoka Musembi** on the **8th December, 2008** and confirmed on **14th May, 2010**. On the **4th July, 2012** **David Muema Musembi (Objector/Applicant)** filed an application seeking revocation and/or annulment of the grant.
2. On the **24th October, 2012** the Petitioner filed a Notice of Preliminary Objection on grounds that the application for summons for revocation of the grant was incompetent, bad in law and *resjudicata* in view of a similar application dated **3rd August, 2011** having been filed and subsequent proceedings dated **19th June, 2012** having taken place as well as the Applicant's letter to court filed on **27th February, 2012**; and that the proceedings ought to be stayed in view of proceedings in **Civil Suit No. 141 of 2011** and the **Court of Appeal Civil Appeal No. 95 of 2012**.
3. The contention of the Applicant is that the application dated **4th July, 2012** is similar to the one dated **3rd August, 2011** which was not heard because the Applicant (**David Muema Musembi**) and two (2) others wrote to the court disowning the application. They sought to withdraw from the matter following an allegation that they had withdrawn instructions from the firm of **B. M. Mung'ata and Company Advocates**.
4. The Objector/Applicant in particular wrote a letter to the court withdrawing instructions from **B. M. Mung'ata and Company Advocates**. When the application dated **3rd August, 2011** came up for hearing, **Asike Makhandia J. (As he then was)** who was presiding over the matter on the **19th June, 2012**, acted on the letters and held thus:

“From the letters, it appears that the application dated 3rd August, 2011 was filed without their instructions. It is accordingly struck out with no orders as to costs as parties are siblings.”

The learned Judge reached the decision having taken cognizant of the letters that formed part of the record and having given counsel, **Mr. Mung'ata**, an opportunity to respond who stated thus:

“I leave it to court.”

5. The order of the court was dated **19th June, 2012**. On the **4th July, 2012** the firm of **B. M. Mung'ata & Company** describing themselves as Advocates for the Petitioner/Applicant filed the application for revocation and/or annulment of the grant.
6. The application was however in respect of **David Muema Musembi** who was described as the Objector/Applicant. The Judge stated that as long as the letters were on record, **Mr. Mung'ata** could not act in the matter. To-date the letters have not been withdrawn.
7. It is therefore apparent that the firm of **B. M. Mungata and Company** filed the application

without authority. The same cannot stand. Accordingly, the Preliminary Objection is upheld. Consequently, the application dated 4th July, 2012 is struck out with costs to the Petitioner/Respondents.

8. It is so ordered.

DATED, SIGNED and DELIVERED at MACHAKOS this 16TH day of JUNE, 2015.

L. N. MUTENDE

JUDGE