



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

**SUCCESSION CAUSE NO. 85 OF 2007**

**IN THE MATTER OF THE ESTATE OF TABITHA WAITHERA KAMAU (DECEASED)**

**BETWEEN**

**ELIUD NJOGU KIHUGA ..... PETITIONER**

**AND**

**VINCENT NJOGU ..... 1ST OBJECTOR**

**ANTON KIMANI KIHUGA ..... 2ND OBJECTOR**

**STEPHEN GITAU KIHUGA ..... 3RD OBJECTOR**

**EUNICE WAMUI NDIGI ..... 4TH OBJECTOR**

**MOSES NDUGU KIHUGA ..... 5TH OBJECTOR**

**ESTHER NJOKI OYARO ..... 6TH OBJECTOR**

**MARY WAMBUI GECHURE ..... 7TH OBJECTOR**

**LUCY WANGECI MUTURE ..... 8TH OBJECTOR**

**PETER KIBERA KIHUGA ..... 9TH OBJECTOR**

**DORCAS NYAMBURA KIHUGA ..... 10TH OBJECTOR**

**JACKLINE JEMIMA KIHUGA ..... 11TH OBJECTOR**

**IRENE NJOGU ..... 12TH OBJECTOR**

**STEPHEN GITAU KIHUGA ..... 13TH OBJECTOR**

**DONALD KAMURU KIHUGA ..... 14TH OBJECTOR**

**MICHAEL KINYANJUI KIHUGA ..... 15TH OBJECTOR**

**SARAH WAMBUI KIHUGA ..... 16TH OBJECTOR**

**FRANCIS NDUNGU KIHUGA ..... 17TH OBJECTOR**

**PETER MUCHERU KIHUGA ..... 18TH OBJECTOR**

**SARAH WAMBOI KIHUGA ..... 19TH OBJECTOR**

**MARGARET AMBURA KIHUGA ..... 20TH OBJECTOR**

**JAMES NJOGU KIHUGA ..... 21ST OBJECTOR**

**RULING - On the Preliminary Objection dated 19<sup>th</sup> November 2010.**

The Preliminary Objection is taken upon three grounds viz:-

**(i) THAT the summons for revocation as instituted is a nullity as the applicant does not fall within the definition of an objector under Rule 2 of the Probate and Administration Rules.**

**(ii) THAT the applicant is seeking to assert a purchaser's interest as against the estate of the deceased which can only be done through an originating summons under Order 36 Rule 1 (g) of the Civil Procedure Rules.**

**(iii) THAT, the applicant lacks "*locus-standi*" to institute any proceedings within the succession cause as he is not a beneficiary capable of vindicating any interests within the succession cause.**

**MR. BARAZA**, learned Counsel, argued the objections on behalf of the Petitioner in this cause. He contended that the respondent in this objection could not under Rule 17 of the Succession Act file an objection to a grant since he would not fall under the category of persons allowed to file such objection. His interest would be that of a purchaser in which case he ought to have filed a civil claim by way of an originating summons. Further, under Rule 17, an objection cannot be filed after confirmation of grant but only before confirmation. Therefore, the respondent's application dated 1<sup>st</sup> March 2010 lacks merit and should be dismissed.

**MR. NABASENGE**, learned Counsel, argued on behalf of the respondent that this preliminary objection is not proper before the Court as it raises issues of evidence and fact which ought to be determined at the hearing of the matter. Further, any person with an interest in the estate of the deceased has the necessary "*locus- standi*" to come to Court.

Learned Counsel contended that the respondent is not a purchaser but a tenant in common and in any event, an originating summons is provided under the Civil Procedure Act which does not apply to succession matters. Further, Rule 17 of the Succession Rules allows for the filing of an objection at any given time. Therefore, the preliminary objection ought to be dismissed.

Basically, this objection is against the summons for revocation of grant taken out by one **NGARUIYA KAMAU**, dated 1<sup>st</sup> March 2010. The objector/applicant is the Petitioner in this cause, **ELIUD NJOGU KIHUGA**, who is the holder of the grant of letters of administration issued in his favour on the 11<sup>th</sup> July 2007 respecting the estate of the late Tabitha Waithera kamau.

The disputed summons for revocation of grant are taken out under S. 76 of the Succession Act and Rule 44 of the Probate and Administration Rules.

Both S. 76 of the Succession Act and Rule 44 of the Probate and Administration Rules provide for

revocation or annulment of grant. Under S. 76, a grant of representation, whether or not confirmed, may at any time be revoked or annulled if the Court decides either on application by **any interested party** or of its own motion.

S. 76 (a) and (e) are concerned with the actual administration of the estate so that any person interested in the estate has a stake in its administration. Such person would have sufficient standing to seek revocation of the grant under S. 76 (d) and (e).

Under Rule 44 (1) any person interested in the estate of the deceased may seek pursuant to S. 76 to have the grant revoked or annulled. It would therefore follow that the respondent in this objection is possessed of the necessary "*locus-standi*" to apply for revocation of the grant issued to the petitioner/applicant. He (respondent) is claiming a proprietary interest in one of the estate's property i.e. Eldoret Municipality Block 12/184.

Rule 17 of the Probate and Administration Rules has been invoked in this objection by the applicant. However, it deals with objection to the issuance of a grant. It does not deal with revocation or annulment of a grant which has already been issued and confirmed.

The jurisdiction to deal with succession matters is a special jurisdiction conferred on the High Court by the Law of Succession Act (Cap 160 LOK). The jurisdiction conferred is to deal with matters which fall within the scope of S. 2 of the said Act and that scope is to deal with intestate and testamentary succession and the administration of the estate of deceased persons. The applicability of the Civil Procedure Act in succession matters is subject to the provisions of Rule 63 (1) of the Probate and Administration Rules.

From all the foregoing, it is apparent that the preliminary objection by the applicant/petitioner is devoid of merit and is hereby dismissed with costs to the respondent. However, considering that persons alleging that they are beneficiaries of the same estate have also taken out summons for revocation and/or annulment of the grant dated 19<sup>th</sup> February 2010, it would be prudent and reasonable for the respondent in this preliminary objection i.e. Ngaruiya Kamau, to hold his application dated 1<sup>st</sup> March 2010 in abeyance pending the hearing and determination of the first application by the alleged beneficiaries.

**J. R. KARANJA**  
**JUDGE**

**[Read and signed this 17<sup>th</sup> day of April 2011]**

**[In the presence of Mr. Baraza for the Applicant/Objector and Mr. Nabasenge for the respondent]**