



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT BUNGOMA**  
**P&A NO.70 OF 2004**

**JOSEPH SIKANGA KAKAI.....DECEASED**

**AND**

**NELSON KAKAI SIKANGA.....PETITIONER**

**VRS**

**MOSES CHETAMBE SIKANGA.....OBJECTOR**

**RULING**

This is a ruling on an application dated 08/10/2009. It seeks to declare that upon the ruling of the court by Justice Sergon dated 17/9/2004, the grant stands confirmed and ought to be so confirmed. The grounds supporting the application are that the Applicant being one of the administrators brought the objection in bad faith. The grant was issued five (5) years ago and has never been confirmed due to the objection filed by a co-petitioner.

The objector in his replying affidavit argues that his objection is still pending and ought to be heard. He further argues that he had no intention of becoming an administrator of the estate but his name was included therein by his lawyer.

Hon. Justice Sergon heard an application dated 13/07/2005 brought by one Nelson Kakai the Applicant herein. It sought to strike out the objection by the Respondent herein dated 26/04/2005. The judge in his ruling observed that there was an application seeking for confirmation of grant in the file. A protest had been filed by the Respondent/Objector Moses Chetambe Sikanga. In dismissing the objection which was filed out of time without leave, the Judge noted that the protest against confirmation by the objector ought to be heard and determined before the grant is confirmed. This has not yet been done and it is necessary that it be done in order to resolve the issue of distribution of the estate. The Applicant has already filed an application seeking for directions dated 13<sup>th</sup> June 2006. A similar application dated 22/06/2007 was filed by the Applicant's advocate who later ceased to act for him.

It is my considered opinion that the way forward is to give directions in this case to facilitate the hearing of the protest against confirmation. For this reason, I hereby give directions that the protester's affidavit sworn on 18<sup>th</sup> July, 2007 be treated as the plaint and the application for confirmation of grant and the supporting affidavit of the Applicant be treated as the defence. Parties to adduce *viva voce* evidence.

The application before me is misplaced and deal with issues already tackled by Justice Sergon. I

therefore dismiss it for being improperly before the court and for lack of merit. The matter to be fixed for hearing in the registry.

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**F. N. MUCHEMI**  
**JUDGE**

Ruling dated and delivered on the 12<sup>th</sup> day of May 2011 in the presence of the petitioner.

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**F. N. MUCHEMI**  
**JUDGE**