



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT BUSIA**

**SUCCESSION CAUSE NO. 148 OF 2008**

**IN THE MATTER OF THE ESTATE OF MOHAMOUD TOLOI KASSIM (DECEASED)**

**ASMAN MACHUKHU TOLOI.....PETITIONER**

**=AND=**

**BAKARI WESONGA KASSI**

**RAMATHAN MABIALA KASSIM**

**HASSAN MURENGA KASSIM.....OBJECTORS**

**R U L I N G**

The Petitioner filed his Petition for a grant of Letters of administration in respect to the estate of Mohamoud Toloï Kassim (deceased) on 3.9.2008. On 30.1.2009 the Objectors filed a Summons for Revocation and Annulment of Grant on the grounds that the petitioner had failed to disclose that certain properties included in the estate, were being owned jointly with the deceased by certain people, before the deceased died. All pleadings appear closed but a hearing date to prove the objection and allow the succession proceedings to proceed, appears to have not been taken.

Then on 22.10.2010 the Petitioner filed a Chamber Summons seeking certain injunctions against the Objector who appeared to be using the disputed properties in a manner which appeared to him, contrary to the rights of the estate as well as of other beneficiaries. The Objectors through their advocates Masiga & Co. in response filed “Grounds of Objection” to the application. The court believes that the Grounds of Objection were meant to be “ ‘Preliminary’ Grounds of Objection” since finally, the parties have argued them in a preliminary manner.

The Objectors simply urge, that the Chamber Summons, being a civil procedure process, cannot be used to seek the relief of injunction in a succession matter since a similar but statutory method of relief, is provided under the Law of Succession Act, Rule 63. The Objectors accordingly call this Summons seeking an injunction, fatally incompetent and liable for striking out. The Petitioner, on the other hand argues, that the injunction sought is properly brought under Order 30 Rules 1&3.

I have perused the above quoted Order 30 of the Civil Procedure Rules. It provides for the manner of representation by trustees in suits concerning property vested in trustees where a suit is with a third party. It provides that in such cases the beneficiaries need not be made parties because the trustee shall appear on their behalf.

The above order in my view has nothing to do with the process of seeking a grant of Letters of Administration in succession where the parties are all beneficiaries themselves. In any case succession matters are catered for fully under the Law of Succession Act and Rules. These provisions provide the mode of protecting properties of the estate including where the court issue injunctions to do so. This is a special Act of Parliament which appears to be self-sufficient. Its provisions cannot be ignored in seeking relief through other provisions of the law which are not related to succession reliefs and which are therefore irrelevant.

In the above circumstances, I agree with the Objectors that the Summons seeking injunctions brought under the Civil Procedure Act and Rules is incompetent. The Chamber Summons dated 19.10.2010 is accordingly struck out with costs to the Objectors. Orders accordingly.

The Objection should be fixed for hearing by either party without further delay.  
Dated and delivered at Busia this 10<sup>th</sup> day of May 2011.

**D.A. ONYANCHA**

**JUDGE.**