

pecuniary and territorial jurisdiction to entertain the petition, as the entire estate was located in Thika District, where all the beneficiaries also resided;

(vii) the impugned petition for grant of probate had been lodged in Mombasa, far away from the estate and the beneficiaries, who were kept in the dark;

(viii) it is “only fair that the grant herein is revoked, to enable the lawful beneficiaries [to] apply for grant of letters of administration.”

The petitioner/respondent, **John Macharia Muhuni**, on **13th July, 2005** filed a document of preliminary objections, contending, *inter alia*, that –

(i) the proceedings initiated by the applicant were frivolous, vexatious, and an abuse of the process of the Court;

(ii) the will of the deceased had not been contested on any grounds for invalidity;

(iii) the applicant is not the personal representative of the alleged beneficiaries.

John Macharia Muhuni also swore a replying affidavit, dated **12th July, 2005**.

Several years later, on **21st September, 2010**, **John Macharia Muhuni**, through the firm of *M/s. Anyanzwa & Co. Advocates*, filed an application by Chamber Summons, brought under Rules 49 and 73 of the Probate and Administration Rules. This application carried one prayer:

“THAT the Summons for Revocation of grant dated 10th May, 2005 filed by Samuel Kagechu Muhuni be dismissed with costs for failure on the part of the applicant to comply with the Order of this Court made on 26th April, 2010.”

John Macharia Muhuni stated as grounds in support of the application, that the Court had ordered, on **26th April, 2010** that the summons for revocation of grant, of **10th May, 2005** be listed for hearing within the Court term, which Court term ended with the month of **July, 2010** but the summons for revocation was not prosecuted.

Learned counsel, **Mr. Anyanzwa**, for the respondent/applicant, swore a supporting affidavit on **20th September, 2010** deponing that the summons for revocation of grant dated **10th May, 2005** had been filed 18 years after grant of probate was issued, on **25th October, 1988** and confirmed, on **26th January, 1991**; that the said summons was not prosecuted for many years; that on **16th November, 2009** the respondent/applicant filed an application for dismissal of the said summons, for want of prosecution; that the respondent/applicant’s said application was dismissed on **26th April, 2010** – but the Court then made the order that the summons for revocation of grant be listed for hearing within the Court term; that the said Court term ended on **31st July, 2010** but the applicant had not fixed the said summons for hearing.

In a replying affidavit dated **17th November, 2010** **Mary Njeri Kagechu** of Thika avers that she is the respondent to the respondent/applicant’s application of **20th September, 2010**. The deponent avers that her husband, the original petitioner for revocation of grant, **Samuel Kagechu Muhuni**, had died; and that since then, she had had difficulties communicating with her Advocates. The deponent avers that **“[her] husband...diligently followed up [on] this matter and he was [making] the trip to Mombasa every time the matter came up for hearing.”** The deponent deponed that the cause in question **“failed to take off so many times because the Court could not reach the matter;”** that her husband died during the pendency of the matter, and this interrupted arrangements for a hearing. The deponent invokes her senior age of 63 years, and **“[pleads] with the Court to allow [her] [to] prosecute the matter...”**

The reference-point, in determining the respondent/applicant’s application is precisely his earlier application of **26th November, 2009**; in that case Lady **Justice Odera**, after considering the pertinent facts and circumstances, had thus, significantly, ruled (on **26th April, 2010**):

“The objector has raised a challenge to the deceased’s will, and it is only fair and just that he be accorded a hearing. In my view the objector deserves his [her] day in Court. As such, I do dismiss the present application and make no order as to costs. I do further order that the Summons for Revocation [of Grant] dated 10th May, 2005 be listed for hearing within this Court term.”

The tenor of the foregoing passage gives the context in which the objector’s case is to be seen. *M/s. Ngata Kamau & Co. Advocates*, for the objector, “*urge the Court to allow the revocation proceedings by Mary Njeri Kagechu and by the applicants to proceed to their ultimate conclusion after hearing and determination on merit.*” Counsel asked that the hearing of the objectors’ application do proceed by way of oral evidence, to enable the objectors to challenge both the formal and substantial validity of the will.

Just as it emerged in the Ruling of **26th April, 2010** that this was a fit and proper case for canvassing on the merits, so does it issue forth from learned counsel’s argument, that there are important questions of *succession rights* at stake, which should be litigated in substance, and justly resolved by the Court.

That position must be upheld again; and in this regard the Court is guided by the terms of **Article 159(2)(d) of the Constitution of Kenya, 2010:**

“(2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles –

....

(d) justice shall be administered without undue regard to procedural technicalities...”

The elemental nature of inheritance rights, in social, economic and legal terms, will, in my opinion, dictate that this is a matter to be resolved, so far as possible, only through a proper canvassing of the issues of merit.

I will make Orders as follows:

- (1) The respondent/applicant’s application by Chamber Summons of 20th September, 2010 is dismissed.**
- (2) Costs shall be in the cause.**
- (3) The applicant’s Summons for Revocation of Grant dated 10th May, 2005 shall be listed for hearing on the basis of priority.**
- (4) Witness testimony shall be taken, in such manner as the Court will direct, in the hearing of the said Summons for Revocation of Grant.**

Orders accordingly.

SIGNED at NAIROBI

**J.B. OJWANG
JUDGE**

DATED and DELIVERED at MOMBASA this 6th day of October, 2011.

**M.A. ODERO
JUDGE**