



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU**  
**SUCCESSION CAUSE NO. 462 OF 2009**  
**IN THE MATTER OF THE ESTATE OF JOHN MATHIU IRWARE....DECEASED.**

**JOHN M'RUKARIA M'IMATHIU.....OBJECTOR**

***LESIT J.***

**R U L I N G**

I have carefully considered this application. This is a matter in which the petitioner who is the applicant filed this petition seeking grant of letters of administration in order to have the land which is the estate of the deceased transferred to him. The petitioners application was granted under a confirmed grant issued in his favour. Eventually the objector brought his objection and applied to have the grant issued to the petitioner allowed. That application was granted and the grant issued to the petitioner was revoked. The judgment of the learned judge revoking the grant issued to the petitioner is on record. In the learned judges judgment. The learned judge observed;

**“In this case, I find Angelo (the applicant herein) obtained the grant fraudulently by making false statements. He failed to state who are the beneficiaries of this estate, he failed to state his relationship if any to the deceased or his right of claim over the deceased property and more seriously annexed a death certificate which the children of the deceased now claim to be a forgery.... All in all, in my view, the grant issued to Angelo ought to be revoked ... He had no right to inherit the deceased land”.**

Subsequent to that judgment the objector/respondent applied for confirmation of the grant issued to the objector. The petitioner was served with the application but he filed no protest or objection. The grant to the objector was therefore confirmed in the presence of all the beneficiaries to the estate of the deceased. The instant application was filed 8 days after the confirmation of the grant to the objector. It is my view that this application is an abuse of the court process the applicant was aware of the application by the objector to the grant issued to him confirmed by the court in good time he took no steps to have that process stopped as provided under the law of succession act and the P&A RULES instead the applicant filed a suit by way of originating summons which he has annexed to this application. The Originating Summons was dated 12<sup>th</sup> January 2010 no applications were made in that suit in the form of an injunction touching on the suit property. The applicant has waited 10 months down the line to seek a stay of the execution under temporary injunction over the suit property. The delay is in my view inordinate and unreasonable it has not been explained in this application.

Even if the appellant was aggrieved by the finding of the learned judge in this Succession Cause the

appellant ought to have appealed against the decision of the learned judge in view of the advance findings made against the applicant in the judge's judgment. Filing the Originating Summons cannot assist the applicants claim over the suit property since the learned judge in this Succession Cause has found that the applicant has no right alsoever to inherit the suit land the subject matter of the estate of the deceased. The judge also made specific findings that the Applicants attempt to take over and have registered in his name the suit land was fraudulent unless this findings are reversed or set aside they are binding on the applicant and consequently he can lay on claim over the suit property.

**Having carefully considered the application before me dated 16<sup>th</sup> November 2010 I find that the same has no merits and consequently dismiss it in its entirety with costs to the Objector/Respondent.**

Dated Signed and delivered at Meru this 17<sup>th</sup> day of February 2010

**LESIT, J  
JUDGE**