



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAKURU**

**Succession Cause 282 of 2008**

**JOHN MAINA.....APPLICANT  
VERSUS  
GRACE NDUTA KARIUKI.....1<sup>ST</sup> RESPONDENT  
JOSEPH GITHUA KARIUKI.....2<sup>ND</sup> RESPONDENT  
RULING**

The applicant has filed summons for revocation or annulment of the grant against the respondents. In the meantime he seeks in the instant application restraining orders to stop the respondents from disposing of, transferring or leasing out the deceased person's only property, namely NAKURU/KAPSITA/540.

It is the applicant's contention that in filing this cause, the respondents did not involve him yet he is the first born son to the deceased person with the latter's first wife, Tabitha Wambui. That the respondents have threatened to evict him from the suit property. That they are also planning to sell the property.

The respondents on their part have denied that the applicant is related to the deceased. That he does not live on the suit property; that they have never threatened him and finally that they have no intention of selling the suit land. The advocate for the respondents did not attend the court to argue these grounds.

I have considered the arguments by both sides. First, I need to point out that the application is erroneously brought under **section 3A** of the **Civil Procedure Act** and **Order 39 rules 1, 2, 3 and 9** of the **Civil Procedure Rules**. The latter is not one of the provisions imported into the **Law of Succession Act** by virtue of **Rule 63** of the **Probate and Administration Rules**. **Section 47** of the **Law of Succession Act** empowers the High Court to entertain any application and determine any dispute under the **Act** and to pronounce such decrees and make such orders therein as may be expedient. Although the provisions cited in support of the application are inapplicable, they do not go to the root of the dispute. The dispute is with regard to the distribution of the suit property and whether the applicant is related to the deceased.

In considering these questions, I am not expected to determine with finality the rights of the parties as that is the function of the court that will decide the summons for revocation or annulment. *Prima facie* from the annexed photocopy of the funeral program, I am satisfied that the applicant has demonstrated his proprietary interest in the property. That interest must be protected before the hearing and determination of the summons for revocation.

In order to maintain the *status quo* and to avoid wastage or alienation, the court in the exercise of its discretion, grants orders restraining the respondents, either by themselves and/or agents and servants from disposing of, transferring or leasing the suit property until the summons for revocation is heard and determined.

No orders as to costs.

**Dated, Signed and Delivered at Nakuru this 30<sup>th</sup> day of April, 2010.**

**W. OUKO  
JUDGE**