



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**SUCCESSION CAUSE 15 OF 2007**

**IN THE MATTER OF THE ESTATE OF JUSTUS M’MURITHI M’BAGIRI (DECEASED)**

**JEMA KARIMI.....OBJECTOR/APPLICANT**

**VERSUS**

**JEMA KARIMI.....PETITIONER/RESPONDENT**

**JAMES KUBAI.....2<sup>ND</sup> RESPONDENT**

**ISAAC NTONGAI SAMWEL.....3<sup>RD</sup> RESPONDENT**

**RULING**

A grant of representation for the estate of Justus M’Murithi M’Bagiri was issued to Mwakithi M’Murithi on 12<sup>th</sup> April 2007. On 18<sup>th</sup> June 2007 Jema Karimi filed an objection and answer to petition. Later on on 21<sup>st</sup> June 2007 he filed petition by way of cross application. After this he has also filed summons for revocation or annulment of the grant.

Learned counsel for the petitioner has filed a notice of preliminary objection to which this ruling relates. The ground of the objection is that the application for revocation or annulment of the grant is incompetent and is untenable in law. It was submitted that the objector cannot file an objection and summons for revocation at the same time.

In reply, counsel for the objector explained that he had been advised by the court (Lenaola, J) to file summons for revocation instead of pursuing the objection proceedings. He further submitted that it is not fatal. It is now settled on the authority of **Mukisa Biscuit Manufacturing Co. Ltd V. West End Distributors Ltd** (1969) EA 696 that a preliminary objection consists of a point of law which if argued as a preliminary point may dispose of the suit. It cannot, however, be raised if it involves the exercise of judicial discretion or if facts have to be ascertained. There is no doubt that the objection was filed on 18<sup>th</sup> June 2007, some two months after the grant was issued.

An objection to the making of a grant can only be made before the grant is issued unless time for objection has been extended by the court. Learned counsel for the objector was properly advised to file summons for revocation or annulment of grant. What he failed to do was to withdraw the objection and answer to the petition and cross application.

But the fact that the two applications were made by the same party in itself cannot dispose of any of them. The preliminary objection raised herein is not one of law capable of disposing of the matter in question. It is overruled and dismissed with costs.

Dated and delivered at Meru this ...12<sup>th</sup> .....day of ...June... 2009.

**W. OUKO**

**JUDGE**