

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

Misc Appli 82 of 2007

JULIUS KAMAU KITHAKA.....1ST APPLICANT

ROSEMARY NJOKI NGARI.....2ND APPLICANT

VERSUS

WARUGURU KITHAKA.....RESPONDENT

RULING

This Application arises out of succession matter. The order complained of was made on 18/3/97 to preserve the estate. It is clear this was an interlocutory order made pending hearing inter partes. It is stated from the bar that there is an application pending for Revocation of grant. It is submitted that it has been pending for the last 10 years. All the same the court is being requested to review and set aside the said ex parte order on the face of it the order expired on 10/4/97, when the application was to be heard inter- partes there is no evidence as to what happened after inter partes hearing. It appears there is no ground to satisfy the requirements under Order 44 CPC. It is simply that the parties went to sleep on their rights and has not taken any steps over the 10 years. I am not satisfied that there is reason to set aside the order. The succession case is still pending and it is important to protect the assets until the final orders of court are made.

I dismiss application with no orders as to costs.

Dated this 13th February, 2008.

J. N. KHAMINWA

JUDGE