



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

**AT MERU**

**Succession Cause 197 of 1997**

**LEONARD KIMEU MWANTHI.....APPLICANT/OBJECTOR**

**VERSUS**

**M'RUKARIA M'TWERANDU M'RIUNGI....RESPONDENT/PETITIONER**

**RULING**

The respondent in this application applied and obtained temporary grant which was subsequently confirmed. The present applicant then sought to have the grant annulled or revoked on the ground that, although he had proprietary interest in the suit land having bought 1 ½ acres, the respondent concealed this fact to the court.

This application was dismissed. However the court issued an inhibition. In a rather windy and omnibus application the applicant now seeks a number of reliefs namely,

“(1) A declaration that the respondent is only entitled to inherit and administer 16/13 shares of the deceased in the suit land No.Ntima/Igoki/3183.

(2) (a) that both the applicant and respondent appear before the Meru Central District Land Registrar for application for petitioning of the suit land

b. that the respondent do apply to the Meru Central District Land Registrar to be registered by transmission as proprietor of his father's 16/31 shares.

3. that the respondent's application dated 7<sup>th</sup> August, 2002 be dismissed with costs for want of prosecution or for lack of merit

4. that the respondent be investigated with a view of being prosecuted for presenting a forged certificate of official search to the court.

These are the main prayers in this application. The application has been described as frivolous, vexatious and an abuse of the court process by the respondent in a replying affidavit. He further states that the orders sought if granted would amount to deciding the suit with finality.

He has also denied that the applicant bought any portion of the suit land. I have duly considered this application as well as the arguments advanced. The first three prayers are seeking substantive orders namely a declaration of rights in respect of the suit land. Yet the applicant has conceded the existence of a suit seeking more or less orders of similar nature in the CMCC No.119 of 2003 which is pending.

His only explanation is that the lower court case has been pending since 2003 yet the respondent may proceed to distribute the estate.

The jurisdiction of this court under Section 6 of the Civil Procedure Act excludes proceeding with the

trial of a suit or proceeding in which the matter in issue is also directly and substantially in issue in a pending suit before any competent court in Kenya. The applicant is in abuse of the court process by filing this application when the very matters he is seeking to articulate are the same or substantially the same ones raised in the suit before the lower court.

For that reason alone this application must fail. Regarding the prayer that the application dated 9<sup>th</sup> August, 2002 be dismissed for want of prosecution, it may be noted that that application sought the confirmation of the temporary letters of administration.

It is clear from the record that the grant was confirmed on 21<sup>st</sup> May, 1998 and issued on 12th June, 1998. It is not clear why the respondent made an application on 7<sup>th</sup> August, 2002 for confirmation.

It is also not clear whether the respondent formally moved the court on 21<sup>st</sup> May, 1998. Thirdly, the grant was confirmed by the Deputy Registrar. However, these are matters that the applicant raised in his application for revocation which, I have said, was dismissed. I cannot therefore revisit them as the dismissal was by a court of concurrent jurisdiction.

Further more the dismissal of the application of 7<sup>th</sup> August, 2002 for want of prosecution will serve no useful purpose as what it was intended for was achieved way before it was filed. Finally on forgery of certificate of official search, once again, the applicant will have an opportunity in CMCC NO.119 of 2003 to prove the allegation.

I come to the conclusion that the application has failed and is dismissed with costs to the respondent.

DATED AND DELIVERED AT MERU THIS 20<sup>TH</sup> DAY OF JULY, 2007

**W. OUKO**

**JUDGE**