



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**Succession Cause 97 of 2007**

**IN THE MATTER OF THE ESTATE OF BENJAMIN KOBIA BAIMPUI ALIAS**

**BENJAMIN IMPUI .....DECEASED**

**AMBROSE MICHUBU ..... PETITIONER/RESPONDENT**

**AND**

**CHRISTOPHER KOBIA.....INTERESTED PARTY/APPLICANT**

**RULING**

The respondent in the present chamber summons dated 11<sup>th</sup> September, 2007 brought summons for revocation or annulment of grant on 10<sup>th</sup> July, 2007. In that application he also sought an order of inhibition in respect of any dealings with land parcel No. ITHIMA/NTUNENE/954 pending the hearing and determination of the said application for revocation of grant. The order of inhibition was granted pending *interpartes* hearing on 1<sup>st</sup> October, 2007.

In the meantime and while the *interpartes* hearing was pending the applicant brought the present application in which he seeks the setting aside or discharge of the inhibition order. The application is premised on the grounds that the respondent's summons for revocation of the grant was not served upon the applicant who only learnt of the same from the Land Registrar's office at Maua.

That having obtained grant of representation, the suit land has been transferred to the applicant who in turn has charged the same with AFC Ltd to obtain a loan of Kshs.300,000/-

The applicant also avers that the respondent ought to have filed the application of 10<sup>th</sup> July 2007 in Maua where the succession was filed finally the applicant contends that the inhibition ought to be vacated as the 14 days have lapsed since its issuance. The respondent in his replying affidavit has argued that the present application is premature. Secondly he argues that if the inhibition order is vacated, he will suffer irreparable loss as he seeks the revocation of the grant of representation.

I have carefully considered these arguments. Clearly the applicant has jumped the gun. Instead of filing a replying affidavit to oppose the application he brought this application a few days before the date for *interpartes* hearing. The application is based on the mistaken understanding that orders of inhibition are, like temporary injunctions, valid for fourteen days, if obtained *exparte*.

Section 128 of the Registered Land Act provides;

**“128(1) The court may make an order (herein after referred to as inhibition) inhibiting for a particular time, or until the occurrence of a particular event, or generally until further orders, the registration of any dealing with any land, lease on charge”.**

I say no move on that point. Regarding the argument that the respondent ought to have filed the application for revocation of the grant in Maua where the succession cause was filed, Rule 44(1) of the law of Succession Act provides the answer. It states:

**“44(1) where any person interested in the estate of the deceased seeks pursuant to the provisions of Section 76 of the Act to have a grant revoked or annulled he shall, save where the court otherwise directs, apply to the High Court for such relief by summons in form 107 and, where the grant was issued through the High Court, such application shall be made through the registry to which and in the cause of which the grant was issued or, where the grant was issued by a Resident Magistrate, through the High Court registry situate nearest to that Resident Magistrate’s registry” (emphasis supplied).**

Finally although the applicant has deponed that he has already changed the suit property to AFC Ltd, there is no evidence to support the claim. For all these reasons, this application is dismissed with costs to the respondent.

Date and delivered at Meru this 12<sup>th</sup> day of October, 2007

**William Ouko**

**JUDGE**

12.10.2007

Coram:

W. Ouko, J

Mr. Omayo for Kimathi

Miss Karani for Kirima

Court clerk – Marangu

Ruling delivered.

**William Ouko**

**JUDGE**