



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT GARISSA**

**SUCCESSION CAUSE NO. 10 OF 2015**

**IN THE MATTER OF THE ESTATE OF MUTEMI KAVIU WANYUA (DECEASED)**

**PAUL MUTEMI.....APPLICANT**

**VERSUS**

**RHODAH MUTEMI.....RESPONDENT**

**RULING**

1. By application dated 16/4/2015 and filed 22/4/2015 Rhodah Mutemi sought revocation of grant issued to Paul Mutemi on 18/3/2014 and confirmed on 25/3/2015.
2. After the matter was heard on merit the trial court Dulu J appointed the 2 rivaling sides to be joint Administrators and directed, they either jointly or separately within 6 months file a schedule of assets and schedule of beneficiaries to the deceased estate and proposed mode of distribution of the assets for the court to consider confirmation of grant.
3. Instead of complying with the said directive, now Paul Mutemi moves court by an application dated 28/5/2018 for revocation of grant made on 13/7/2016. The grant made by Dulu J via ruling of 13/7/2016 was pursuant to determination of application of revocation of grant on merit between the 2 parties herein.
4. Thus the application to revoke grant by Paul Mutemi has attracted a preliminary objection dated 16/9/2019 on the ground that it is res judicata.
5. The test of determining whether matter is res judicata are set out in the case of **Benard Mugo Ndegwa vs James Nderity Githae & 2 Others [2010] eKLR** as follows:-

**“The matter in issue**

- **Is identical in both matters.**
- **Parties are the same.**
- **Sameness of title/claim.**
- **Convenience of jurisdiction.**
- **Previous decision.”**

6. The ruling by Dulu J of 13/6/2016 was on revocation of grant between the 2 parties and both were appointed joint administrators thus identical in issue and parties.
7. The title and/or claim is the deceased person estate subject herein. The jurisdiction of this court is the same as that of Dulu J and finally there is decision by Dulu J which stands unchallenged.
8. Thus **this court finds that the application is res judicata and is hereby struck out.**
9. **Parties must fast track the finalization of the matter.**
10. **No orders as to costs.**

DATED, DELIVERED AND SIGNED AT GARISSA THIS 13<sup>TH</sup> DAY OF FEBRUARY, 2020.

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C. KARIUKI

JUDGE