



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 2044 OF 2014**

**IN THE MATTER OF THE ESTATE OF FRANCIS KARUGI KIARIE (DECEASED)**

**RULING**

1. I am called upon to determine a preliminary objection dated 25<sup>th</sup> September 2014. The respondent argues that the applicants summons for revocation of grant dated 28<sup>th</sup> July 2014 is defective to the extent that it is purportedly brought under the wrong provisions of the law.
2. The applicant was granted leave on 5<sup>th</sup> November 2014 to amend the summons, and there is on record an amended summons dated 16<sup>th</sup> May 2016.
3. The preliminary objection was argued on 13<sup>th</sup> July 2016.
4. I am of the view that the objection was overtaken by the event of grant of leave to amend the summons and the filing of an amended summons which cites the correct provisions and which is properly intituled. There is no objection to determine in the circumstance.
5. The grant sought to be revoked had been made by the lower court in Kikuyu RMCSC No. 71 of 2012. The Law of Succession Act, Cap 160, Laws of Kenya, has been amended to take away the jurisdiction previously given to the High Court to revoke grants made by the resident magistrate, and have conferred the resident magistrate with the jurisdiction to revoke grants that that court has power to make.
6. The order that I am minded to make in the circumstances is to dismiss the Preliminary Objection dated 25<sup>th</sup> September 2014, and to direct that the cause herein be transferred to the Kikuyu law courts so that the Summons for Revocation of grant dated 28<sup>th</sup> July 2014, as amended, shall be heard and determined within Kikuyu RMCSC No. 71 of 2012. The objection is therefore hereby dismissed, and the cause herein transferred to the Kikuyu Resident Magistrate's Court for consolidation with Kikuyu RMCSC No. 71 of 2012 and for disposal of the application within that cause thereafter.

**DATED and SIGNED at NAIROBI this 3<sup>RD</sup> DAY OF MAY, 2017.**

**W. MUSYOKA**

**JUDGE**

**DELIVERED and SIGNED this 5<sup>TH</sup> DAY OF MAY, 2017.**

**M. MUIGAI**

**JUDGE**