



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**SUCCESSION CAUSE NO. 270 OF 2011**

JOHN MUREA MWENDA.....1<sup>ST</sup> PETITIONER

SILAS MWITHALI MEME.....2<sup>ND</sup> PETITIONER

Versus

IBRAHIM MWONGERA MEME.....1<sup>ST</sup> OBJECTOR

PATRICK NJIRU MEME.....2<sup>ND</sup> OBJECTOR

MARTHA KAGENDO MEME.....3<sup>RD</sup> OBJECTOR

**RULING**

**Removal of inhibition**

[1] The Summons before me is expressed to be brought under to Rule 73 of the Probate and Administration Rules CAP 160 of the Laws of Kenya. In the Summons, the Petitioners have sought for the following orders:

1. **An order for the discharge and or removal of inhibition registered upon Land Parcel NO. Ithima/Ntunene/1537, Ithima/Ntunene/1543, Ithima/Ntunene 1535 and Ithima/Ntunene/1336 and also discharge of all other orders issued by this court on 22<sup>nd</sup> October 2012.**
2. **An order for the Petitioners to implement/execute the grant as confirmed by this court on 19<sup>th</sup> September 2012; and**
3. **Any other or further orders that the court may deem fit.**

[2] The Petitioners argued that, on 19<sup>th</sup> October 2012 the purported Objectors filled an Application dated 17<sup>th</sup> October 2012 seeking inter alia the following orders:

- a) **Inhibition orders on Land Parcel numbers Ithima/Ntunene/1537, 1543, 1535 and 1536.**
- b) **Revocation of grant issued herein.**
- c) **Arrest and prosecution of the petitioners.**
- d) **D.N.A test.**

**e) Investigation of the parentage of the 2<sup>nd</sup> Petitioner herein.**

The said application was withdrawn on 26<sup>th</sup> November 2013 in open court. Consequently, there is nothing pending in this cause to be heard or otherwise to be determined. The major grounds for applying can, therefore, be summarized to be: That the orders of 19<sup>th</sup> September, 2012 were made pursuant to the application dated 17<sup>th</sup> October 2012. And since the said application was withdrawn, and there is no application for annulments of grant which is pending, there are no proper objection proceedings on record herein. Accordingly, in the absence of any valid challenge to the grant, the inhibition orders should be vacated.

[3] When the matter came up for hearing on 19<sup>th</sup> November 2015, Mr. Gichunge for the Objectors intimated to the court that the objection dated 17<sup>th</sup> October 2012 and another one dated 11<sup>th</sup> October 2012 were still pending before court. But, contrary to Mr. Gichunge's assertion, the record shows that the application dated 17<sup>th</sup> October 2012 was on 26<sup>th</sup> November 2013 withdrawn upon the consent of the parties. The consent was recorded by the court recorded as follows:

**“Application dated 17<sup>th</sup> October 2012, be and is hereby marked withdrawn with no order as to costs.”**

[4] I have also perused the record in respect of the application dated 11<sup>th</sup> October 2012. It would appear that the Objectors, for reasons known to them, have never listed the said application for hearing despite the fact that it was brought under a Certificate of Urgency. It is a great tragedy to the law and fair trial when parties engage in acts of temporizing cases at whims, and for as long as they feel like. The application for revocation has never been prosecuted and nothing else has turned out of the said application. This application is becoming a source of prejudice herein. Of significance, the Objectors in the application dated 11<sup>th</sup> October 2012 have not even opposed the Application under consideration. Accordingly, the court is convinced that any reliance upon such dormant application by the Respondent is suspect. There is absolutely nothing which would make this court to allow orders which are hurtful to others in a suit to subsist merely because an application somewhere is pending yet for all purposes it is lying inactive. There is another bigger goal that this court must achieve; administration of the estate in accordance with the law; which I think should not be defeated or delayed by parties who file applications without the intention of ever prosecuting them at all or with speed. In the end result, I come to the conclusion that there is no any legal justification to sustain the inhibitions registered in the estate property. Accordingly, the Application dated 6<sup>th</sup> May 2015 is meritorious, and I grant it. This being a succession matter, I will make no order as to costs. It is so ordered.

**Dated, signed and delivered in court at Meru this 11<sup>th</sup> day of April 2016**

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**F. GIKONYO**

**JUDGE**

**In the presence of:**

Mokua advocate for Ondari advocate for the petitioner.

Gichunge advocate for the objector.  
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**F. GIKONYO**

**JUDGE**