



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

**SUCCESSION CAUSE NO. 3338 OF 2005**

**IN THE MATTER OF THE ESTATE OF BONIFACE RIMUI NJAU (DECEASED)**

**RULING**

1. This ruling is in respect of a Preliminary Objection to the Summons for Revocation of Grant dated 1<sup>st</sup> October 2012.
2. The Preliminary Objection is comprised in the Notice filed herein on 1<sup>st</sup> July 2014. The Notice lists three grounds of objection-
  - a. **That the applicant had previously filed an application similar to that of 1<sup>st</sup> October 2012, being a summons dated 29<sup>th</sup> September 2009, which he subsequently withdrew;**
  - b. **That another application seeking similar orders was filed on 15<sup>th</sup> December 2009 by Susan Nyandia Njau, the same was heard and dismissed with costs on 23<sup>rd</sup> February 2013; and**
  - c. **That the application dated 1<sup>st</sup> October 2012 is bad in law for it seeks not the revocation of the grant on record, but rather the replacement of the respondent as administrator and for the re-distribution of the estate of the deceased in the manner that the applicant proposes.**
3. It is now notorious that a favourable determination of a Preliminary Objection on a point of law ought to dispose of the entire suit or matter. The effect of that is that it ought to dispose completely of the application dated 1<sup>st</sup> October 2012. It is not interlocutory in the sense of disposing of certain aspects of the pending application while leaving others outstanding.
4. The notice of objection raises two issues – that the application dated 1<sup>st</sup> October 2012 is an abuse of the court process in view of the withdrawal of the application dated 29<sup>th</sup> September 2009 and the dismissal of the application dated 14<sup>th</sup> December 2009, and that the said application does not really seek revocation of the grant but the replacement of the respondent as administrator.
5. The application dated 1<sup>st</sup> October 2012 is premised on Section 76 of the Law of Succession Act and Rules 44 and 73 of the Probate and Administration Rules. It seeks one principal prayer, the revocation of the grant made to Susan Nyandia Njau and Stephen Rimui Njau and for a fresh grant to be made to Susan Nyandia Njau and Clement Njoroge Njau. The principal ground for the revocation is that the grant has become inoperative for the two administrators are no longer working together due to the non-cooperation of Stephen Rimui Njau, the respondent herein.
6. The earlier application is dated 29<sup>th</sup> September 2009. It was brought at the instance of Susan Nyandia

Njau, one of the applicants in the summons dated 1<sup>st</sup> October 2012. The application did not cite the provisions under which it was brought, but it sought the removal of Stephen Rimui Njau, the respondent herein, as co-administrator, on the grounds of non-cooperation. The respondent reacted to it *vide* his replying affidavit sworn on 18<sup>th</sup> November 2009.

7. While the application dated 29<sup>th</sup> September 2009 was still pending, the applicant filed another application dated 14<sup>th</sup> December 2009, seeking rectification of the grant dated 4<sup>th</sup> December 2006. The application dated 29<sup>th</sup> September 2009 was withdrawn on 26<sup>th</sup> April 2010 after it transpired that one of its aspects turned on the same facts as the application dated 14<sup>th</sup> December 2009.

8. G.B.M. Kariuki J. heard the application dated 14<sup>th</sup> December 2009. By a ruling dated the 23<sup>rd</sup> February 2009 the court declined to order rectification of the certificate of confirmation of grant dated 4<sup>th</sup> December 2006 on the grounds that the rectification sought really amounted to a redistribution of the estate, yet redistribution could only be achieved through a revocation of the grant.

9. The application that is now pending determination is dated 1<sup>st</sup> October 2012. It specifically seeks revocation of the grant on record, to be followed thereafter by appointment of fresh administrators. The matter of the revocation of the grant on record has never been dealt with by the court previously on its merits. It came up in the application dated 29<sup>th</sup> September 2009, which was withdrawn, but it did not come up in the application dated 14<sup>th</sup> December 2009. The question of revocation was therefore not one of the issues placed before G.B.M. Kariuki J. for consideration, and it was not one of the issues addressed by the court in its ruling of 23<sup>rd</sup> February 2012. The matter is therefore not *res judicata*.

10. In any event the application dated 29<sup>th</sup> September 2009 did not specifically pray for revocation of the grant on record neither did it purport to be an application grounded on Section 7B of the Law of Succession Act which governs revocation of grants. It cannot be said that the two applications seek similar orders.

11. Furthermore, the application dated 29<sup>th</sup> September 2009 was not heard on its merits and a judicial determination made thereon. It was withdrawn. Such withdrawal is not a bar to the filing of a similar application on the question of the removal of the administrator in question, but it was a bar to the filing a subsequent application on the matter of the rectification of the certificate of confirmation of the grant dated 4<sup>th</sup> December 2006.

12. In view of everything that I have said above, it is my conclusion that the Preliminary Objection dated 1<sup>st</sup> July 2014 is wholly without merit. I do hereby decline to uphold it, instead I dismiss the same with costs to the applicants. The applicants to the application dated 1<sup>st</sup> October 2012 are hereby directed to have the said application fixed for directions.

**DATED, SIGNED and DELIVERED at NAIROBI this 3<sup>RD</sup> DAY OF JULY, 2015.**

**W. MUSYOKA**

**JUDGE**

**In the presence of ..... advocate for the Applicant.**

**In the presence of ..... advocate for the Respondent.**