



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 752 OF 2011**

**IN THE MATTER OF THE ESTATE OF LUCIA MBITHE NZAU (DECEASED)**

**KELI KIMILU.....1<sup>ST</sup> RESPONDENT**

**JOHN MAKAU KIMILU.....2<sup>ND</sup> RESPONDENT**

**VERSUS**

**SIMON KALOKI KANYELE.....APPLICANT**

**RULING**

1. The application dated 3<sup>rd</sup> June, 2012 seeks orders that there be a stay of the implementation of the grant confirmed on 26<sup>th</sup> April, 2013 and that the said grant be annulled and/or revoked.
2. According to the affidavit in support, the Applicant, Simon Kaloki Kanyeke had filed a protest to the confirmation of the grant but the grant was confirmed before the protest was heard and without the Applicant's knowledge.
3. The Respondent did not file any papers in opposition to the application.
4. Although directions were taken in the presence of both sides that the application be canvassed by way of written submissions, the Respondents did not file any. I have considered the application and the submissions filed by the Applicant. The Applicant has exhibited the copies of the affidavit in protest and the receipt issued upon filing of the same on 28<sup>th</sup> October, 2011. The confirmation of the grant on 26<sup>th</sup> April, 2013 was therefore irregular since there was a protest already on record. It is not denied that the Respondents were served with the protest.
5. In the premises the application is allowed with costs.

**B. THURANIRA JADEN**

**Dated and delivered** at Machakos this 7<sup>th</sup> day of October, 2015

**B. THURANIRA JADEN**

**JUDGE**