



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**SUCCESSION CAUSE NO. 68 OF 1992**

IN THE MATTER OF THE ESTATE OF THE LATE MUTHIANI WAEMA KATUMO- (DECEASED)

**JOHN MAKAI MUTHAMI ..... APPLICANT**

**VERSUS**

**MBULWA MUTHIANI WAEMA ..... PETITIONER/RESPONDENT**

**RULING**

1. The **Summons for Revocation of Grant** dated 2/7/12 is brought under **section 47 & 76** of the **Law of Succession Act & Rule 44 of the Probate and Administration Rules**. The application seeks orders that:-
  1. **“THAT the grant confirmed on 20/1/2012 be revoked and the Petitioner Mbulwa Muthiani Waema be directed to return the Certificate of Confirmation of Grant back to court.**
  2. **THAT the distribution of the estate of the deceased be stayed pending the determination of MACHAKOS HCCC No. 173 of 2010 between Daniel Muthami Mutyambwii –vs- Muthiani Waema.**
3. **THAT the costs of this application be awarded to the Applicant.”**
2. The application is supported by the affidavit sworn by the Applicant, **John Makai Muthami** on 2/7/2012. According to the said affidavit, the title to **Land Parcel No. Nzai/Nziu/223** which is one of the properties the subject of these succession proceedings was registered in the joint names of the deceased herein, **Muthiani Waema Katumo** and one **Daniel Muthami Mutyambwii** (hereinafter **Mutyambwii** now deceased). That the said **Mutyambwii** entered appearance in these proceedings as an Interested Party and served the appearance on the Petitioner/Respondent, **Mbulwa Muthiani Waema**. The said **Mutyambwii** also filed a caveat and served the same on the Respondent. The Caveator then filed **HCCC Machakos No. 172 of 2010** over the same parcel of land.
3. The Applicant’s complaint is that the Petitioner filed a summons for confirmation of grant through the firm of **Paul Kisongo & Co. Advocates** and the grant was confirmed on 20/1/2012 without the Caveator having been notified. The Applicant’s contention is that the Respondent concealed the existence of the caveat and the pending civil suit. That the Summons for Confirmation was filed by the Advocate without notice of appointment of Advocate and the acceptance of the appointment as required by the law. The Applicant’s claim in **HCCC No. 173 of 2010** is over the whole of **Land Parcel No.Nzai/Nziu/223**.
4. In opposition to the application, the Respondent filed grounds of objection dated 24/10/12. In a nutshell, the objection is on the basis that the rights of the Caveator were not affected by the confirmation, that the registered co-proprietor of **Land Parcel No.Nzai/Nziu/223** was deceased

and had not been substituted, that no reasons were given for registering a caveat and that the issue of representation by counsel did not affect substantive justice.

5. A caveat was filed herein on 24/8/2010 by **Nduva Kitonga & Co. Advocates** for the Caveator. The grant was subsequently confirmed on 20/1/12. During the confirmation of the grant the Caveator was not present. Although the unchallenged affidavit evidence reflects that the Caveator (**Daniel Muthami Mutyambii**) passed away on 10/8/2011 and the grant of Letters of Administration in his estate had not been issued until 22/5/2012, there is nothing on the record that indicates that the Advocates for the Caveator or the estate of the Caveator was notified of the application for confirmation. This was a violation of the provisions of **rule No. 15** of the **Probate and Administration Rules**.
6. It is not in dispute that **HCCC No. 173 of 2010** was pending between the parties herein in relation to the ownership of **Land Parcel No.Nzaui/Nziu/223**. Once again, this information was not brought to the attention of the court during the hearing of the Summons for Confirmation.
7. With the foregoing, I am satisfied that the application has merits and is allowed with costs to the Applicant.

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**B. THURANIRA JADEN**

**JUDGE**

**Dated and delivered at Machakos this 15<sup>th</sup> day of May 2014.**

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**B. THURANIRA JADEN**

**JUDGE**