



No.333/2014

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 421 OF 2013

IN THE MATTER OF THE ESTATE OF KUYA OLE SAISI LOLNGONYA (DECEASED)

JAMES SANKALE MASEENKE.....1ST APPLICANT

RICHARD KANANA MASSEY (SUING ON BEHALF

OF THE LATE JOHN MARK KISOKONI MASSEY)2ND APPLICANT

VERSUS

KORENTI KUYA SAISI.....1ST DEFENDANT

KOINA KUYA SAISI2ND DEFENDANT

RULING

1. Applicants herein filed an application dated **12th June, 2013** seeking for an order revoking/annulling the confirmed Grant issued on the **9th July, 2004** in **Succession Cause No. 14 of 2003**.
2. The application is based on grounds that the grant was obtained by virtue of the consent that was recorded in court on the **9th July, 2004** apportioning **Title No. Kajiado/Meto/62** between the widows of **Kuya Ole Saisi** (deceased).
3. The deceased, the late **Mark Kisokon Massey** and **James Sankale Ole Maseenke**, the 1st applicant herein were registered as proprietors in common in respect of the title in the year **1987**. It is therefore averred that it will be in the interest of justice that the grant be revoked since it purports to give the respondents inheritance rights over the whole suit premises.
4. A similar application was made in **Succession Cause No. 941** of **2009**. I delivered a ruling on **12th April, 2013** dismissing it on grounds that no evidence was adduced of a Certificate of a Confirmation of the grant purported to have been issued distributing the property in **Senior Resident Magistrate Court's Kajiado No. 14** of **2003**.
5. Subsequently, the applicants filed the current application. A perusal of the application dated **12th June, 2013** is a duplicate of the application dated **6th November, 2009** filed in **Succession Cause No. 941** of **2009**. It is a repetition of the same, word by word. The only difference is the date and the firm of advocates that filed it and one additional ground that the applicants sought to rely on.
6. The parties in both **Succession Causes No. 941** of **2009** and **Succession Cause No. 421** of **2013**

are similar and so is the subject matter. Having ruled on the matter it was an abuse of the court process for the applicants to file a fresh suit on the same subject matter. The subject matter in both causes being revocation of the grant is directly and substantially in issue in **Succession Cause No. 941 of 2009**. The application having been dismissed it was erroneous for the party to file another succession cause. They had an option of appeal or review that they should have exercised.

7. From the foregoing, the application must be dismissed and I so order. There will be no order as to costs as the respondents did not turn up on the hearing date.

DATED, SIGNED and DELIVERED at MACHAKOS this 11TH day of JULY, 2014.

L.N. MUTENDE

JUDGE