



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

SUCCESSION CAUSE NO. 399 OF 2011

IN THE MATTER OF ESTATE OF SAMUEL MUNDU WAIGANE (DECEASED)

EUNICE IGANDU S. NJAGI.....ADMINISTRATOR/RESPONDENT

VERSUS

MARGARET KARIMI SAMUEL.....APPLICANT

RULING

A. Introduction

1. Before me is a summons dated 9/10/2020 and seeking lifting of prohibitory order registered against parcels of land Nos. Kagaari/Kanja/8835, 8836, 8837, 8838, 8839, 8840 and 8841 all resultant subdivisions of original parcel of land No. Kagaari/Kanja/1221 and costs of the application.
2. The applicant's case is that vide an order of 20/02/2013 the court inhibited any dealings with parcels of land Nos. Kagaari/ Kanja/8835, 8836, 8837, 8838, 8839, 8840 and 8841 all resultant subdivisions of original parcel of land No. Kagaari/ Kanja/1221 pending the hearing and determination of an application for revocation of grant and which order was duly registered at the land's office as against the said land parcels. That the said application for revocation of the grant was determined on 20/02/2020 and as such the inhibitory order serves no purpose. As such the said inhibitory orders ought to be lifted so that the estate can be distributed.
3. The said application is not defended and neither did the respondent attend court at the hearing thereof despite having been served. Evidence of service is on record.
4. I have considered the said summons and the supporting affidavit.
5. I have perused through the court record and I note that indeed vide the orders of 13/03/2013, H.I. Ong'udi, J. inhibited any dealings with parcels of land Nos. Kagaari/Kanja/8835, 8836, 8837, 8838, 8839, 8840 and 8841 all resultant subdivisions of original parcel of land No. Kagaari/Kanja/1221 pending the hearing and determination of the application which had been filed by the applicant herein. The said application was heard and a ruling delivered on 20/01/2020 by F. Muchemi, J.
6. The respondent herein is the administrator of the estate. The court has already pronounced itself on the mode of distribution of the estate. The said order has not been appealed against. The applicant is the person on whose benefit the inhibition was put. She now wants to have the same lifted. This court is alive to the fact that the effect of an inhibition is to preserve the property from acts that would otherwise render a court order incapable of being executed and/or to give an opportunity to hear and decide the matter and so as to preserve the status quo pending the hearing and determination of the issue before court. Now that the issue has been decided and parties seems contented, it is the view of this court that maintaining the inhibition would not for the benefit of the estate as no administration can be undertaken when the inhibition is in place.
7. The duty of this court is to facilitate the distribution of the estate of the deceased amongst the beneficiaries and in performance of such duties the court ought to do away with any obstacle which might hinder administration. One of the said obstacles is an inhibition such as the one subject of this application. The same ought to be lifted so as to allow the distribution of the estate. The application is allowed in terms of prayer 1 thereof.
8. Each party to bear their own costs.
9. It is so ordered.

Delivered, dated and signed at Embu this 24th day of February, 2021.

L. NJUGUNA

JUDGE

.....for the Applicant

.....for the Respondent