



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

PROBATE AND ADMINISTRATION CAUSE NO.69 OF 2004

IN THE MATTER OF THE ESTATE OF THE LATE NATHAN BISAHO (DECEASED)

BETWEEN

WYCLIFFE BISAHO.....PETITIONER/RESPONDENT

AND

MIRIAM WANGARE BISAHO.....OBJECTOR/APPLICANT

R U L I N G

[1] The application dated 10th March 2020, by Miriam Wangare Bisaho (**OBJECTOR**) is brought by way of chamber summons unnecessarily under several provisions of the Constitution, the Civil Procedure Act and the Law of Succession Act. This being a succession matter, the enabling provisions of the Succession Act ought to have been solely involved. Nevertheless, the applicant seeks orders that the ruling of this court delivered on **28TH MAY 2014** be reviewed and set aside upon terms that the court may deem fit in the circumstances.

The grounds in support of the application are set out in the body of the summons and fortified by the applicant's supporting affidavit deponed in Nairobi on the 10th March 2020. The **PETITIONER/RESPONDENT**; Wycliff Luvita Bisaho opposes the application on the basis of the grounds contained in his replying affidavit dated 12th May 2020 and filed herein on 11th June 2020.

[2] Hearing of the application proceeded by way of written submissions. In that regard, the applicant's submissions dated 16th December 2020, were filed by **MAOSA & CO. ADVOCATES** while the respondent's submissions dated 15th January 2021, were filed by **GABRIEL FWAYA & CO. ADVOCATES**.

This court, having given due consideration to the application on the basis of the supporting grounds and those in opposition thereto and in the light of the rival submissions and having carefully perused the record, is of the view that the basic issue for determination is whether the application is competent and proper before the court and if so, whether the applicant would be entitled to an order for the review of the order or ruling made by the court on 28th May 2014.

[3] With regard to the first segment of the issue it may be noted that the grant or refusal of the orders sought herein by the applicant is essentially a matter of discretion which in all cases must be exercised judiciously. Apparently, the ruling that the application seeks to review was made on 28th May 2014, but it took a period of approximately six (6) years for her to move the court for a review order vide the present application dated 10th November 2020. This delay is not at all or properly explained and since "delay defeats equity," the applicant would on that account not be entitled to exercise of discretion in her favour as it is clear that this application is meant to delay the expeditious disposal of the matter which has been in the corridors of justice for over fifteen (15) years, hence a gross abuse of the court process.

[4] Be that as it may, the impugned ruling was a culmination of an application for revocation of grant made by the applicant/objector on the 15th September 2011. The subject grant was issued in this court on **5TH NOVEMBER 2004** and was confirmed on 9th May 2011, approximately seven (7) years later, in favour of the respondent, a step son of the applicant and seemingly, the eldest son of the late Nathan Bisaho Luvita, who was a polygamist married to two wives including the applicant as the first wife. The application was ruled in favour of the applicant with the result that the grant was revoked and the applicant was appointed together with the respondent as joint administrators of the estate of the deceased. With that, it was expected that a fresh grant in the joint names of the applicant and respondent would issue and be confirmed on presentation of a fresh summons for confirmation of the grant with an agreed mode or schedule of distribution of the estate among the rightful beneficiaries. But, the record does not show that any fresh grant or summons for confirmation of grant was issued.

[5] Instead, on the 8th May 2015, the applicant filled a notice of motion dated 8th April 2015, for review of the impugned ruling delivered on

28th May 2014. Prior to that, the applicant on the 28th October 2014, filed a notice of appeal dated 27th October 2014, thereby indicating that he was dissatisfied with the ruling and intended to appeal against it in the Court of Appeal.

So the applicant actually applied for the review of the impugned ruling while also expressing a strong intention of appealing the ruling in a higher court. However, neither the application nor the intended appeal were ever prosecuted by the applicant for appropriate determination from the court. This means that both the application and the intended appeal have since been overtaken by events and/or have simply been forgotten and disappeared into oblivion.

[6] The foregoing notwithstanding, the applicant brought the present application dated 10th March 2020, praying for the same orders as in the previous and similar application dated 8th April 2015. This is a further classic demonstration of the applicant's abuse of the court process with a view to further and unreasonable delay the expectations disposal of this matter. Such conduct smacks of bac faith on the part of the applicant in making the previous application as well as the fresh application which in any event is bereft of proven and valid grounds to compel exercise of discretion in her favour.

In sum, the respondent's objection to the application is hereby sustained with the result that the application is hereby dismissed with orders that a fresh grant of letters of administration intestate do issue forthwith in the names of both the applicant and the respondent and that the same be confirmed upon presentation of a fresh summons for confirmation of grant by either party within the next **FOUR (4) MONTHS** from this date hereof. In default, the fresh grant and indeed any other grant that may have been issued previously shall stand revoked forthwith and the matter referred to the public trustee for administration and the eventual distribution of the estate of the deceased among the rightful beneficiaries.

Ordered accordingly,

J.R. KARANJAH

J U D G E

[READ AND SIGNED THIS 25TH DAY OF MAY 2021]

[IN THE PRESENCE OF MR. FWAYA FOR RESPONDENT]