

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 325 OF 1994

IN THE MATTER OF THE ESTATE OF SHIOMUNYALI MUCISUMI (DECEASED)

RULING

1. What I am tasked with determining is the Motion dated 22nd September 2017. It seeks review and setting aside of orders that resulted in revocation of certain entries relating to Kakamega/Malava/141, and reinstatement of titles issued pursuant to confirmation of the grant herein.
2. The orders that are sought to be reviewed have not been identified in the face of the Motion. The affidavit sworn in support is also not clear on which orders are sought to be reviewed. Paragraph 10 of the affidavit says that certain titles were revoked by orders made on 15th January 2016, yet paragraph 17 says that that was the date when the order sought to be reviewed was registered. Paragraph 15 says that the orders to cancel the titles were made on 9th October 1997.
3. I have looked through the record, and noted that no orders were made on 15th January 2016 since there was no court appearance that day, which would have culminated in the making of any orders. The record is equally clear that there was also no court appearance before a Judge on 9th October 1997, which would have resulted in making of orders on that day. The record reflects that the matter was placed before a Judge on 30th October 1996, when the grant was confirmed. After that the matter was not placed before a Judge again, until 4th February 2009, when directions were given on the disposal of a summons for revocation of grant. As it is, it is not clear to me which orders the applicant asks me to review or set aside.
4. There is reference to confirmation orders. These were made on 30th October 1996. However, those confirmation orders fell by the wayside on 8th July 2010, when the confirmed grant was revoked, and it was ordered that a fresh grant issue, and that the new administrators proceed to apply for confirmation of their grant. Any transactions that were nullified, as a consequence of the orders of 8th July 2010, cannot be reinstated, because those orders were consequential to the revocation orders. They have no life of their own, separate or apart from the revocation orders. Their reinstatement must be dependent on the reinstatement of the revoked grant, which is not what the applicant is asking for. What the applicants should do is to wait for the new administrators to mount an application for confirmation of their grant, and to that application file their affidavits of protest, to agitate their case, so that the court can consider their case within the context of the confirmation application.
5. Consequently, for the reasons given above, I find no merit in the application dated 22nd September 2017, and I hereby dismiss the same. Each party shall bear their own costs.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 6th DAY OF AUGUST, 2021

W MUSYOKA

JUDGE