

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

SUCCESSION CAUS ENO.19 OF 2007

IN THE MATTER OF THE ESTATE OF JUMANNE MSABAH ABED (DECEASED)

ASMIN JUMAPETITIONER

VERSUS

MWANAIIDI NYANGULE MWAVITA...OBJECTOR/APPLICANT

R U L I N G

[1] The subject grant respecting the estate of the late Jumanne Msabah Abed (**deceased**) was effectively issued on 12th June 2019 to Asmin Juma (**petitioner**) who took over the petition following the demise of the original petitioner, Siwaki Abdalla Jumanne, her mother and second widow/wife of the deceased who passed away on the 9th September 1993 and was survived by two widows and several children. He left behind parcels of land described as Bukhayo/Mundika/4993 and Bukhayo/Mundika/4994. His first wife, Mwanaidi Nyengule Mwavita is the **objector/applicant** in this application or protest vide the affidavit of protest dated **14th September 2020**, filed long after the grant was confirmed and the necessary certificate of confirmation of grant issued on 4th July 2019.

Nevertheless, the protest was argued by way of affidavit evidence and written submissions which were filed by the petitioner on 15th January 2021, through **Obura Obwatinya & Co. Advocates**. The applicant/objector did not file written submissions and therefore relied on the grounds in the affidavit of protest.

[2] Having considered the protest, the grounds in support thereof and those in opposition thereto as specified in the petitioner's replying affidavit dated 23rd September 2020 and her submissions, the basic issue arising for determination is first and foremost whether the protest is competent and proper before the court for determination on the merits.

The answer to the question as may be deciphered from the court record is absolutely in the negative for reason that the protest was brought too late in the day as the grant had already been confirmed more than one year earlier. This meant that the estate was spent and the process of administration and distribution of the estate to the rightful beneficiaries was complete. The legal obligation and responsibility of the petitioner in relation to the estate was thus discharged and any person not satisfied was at liberty to file for a review of any order that the court may have made on the basis of applicable grounds or take out necessary summons for revocation and/or annulment of grant pursuant to **s.76 of the Law of Succession Act**.

[3] It would therefore follow that the present protest is clearly misconceived, defective, incompetent and improper before this court. It should be noted that after a grant is issued and confirmed, no objections thereto are permissible. In the circumstances the grant and/or certificate of confirmation of the grant can only be revoked.

For all the foregoing reasons, it would not be prudent to even think of considering the protest on its merits or demerits.

In the upshot, the protest is hereby dismissed for want of competence and propriety.

Each party shall bear their own costs of the protest.

J.R. KARANJAH

J U D G E

[READ & SIGNED THIS 23RD DAY OF NOVEMBER 2021]