



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

SUCCESSION CAUSE NO. 661 OF 2013

IN THE MATTER OF THE ESTATE OF IDDI MAKOKHA MWIMA Alias MAKOKHA MWIMA (DECEASED)

ISMAIL MWIMA MAKOKHA PETITIONER/RESPONDENT

VERSUS

ALI MAKOKHA WANGATIA.....1ST OBJECTOR/APPLICANT

FLORA WERE AUMA (SUING AS THE LEGAL REPRESENTATIVE OF:

THE ESTATE OF PATRICK WERE CHESINO)2ND OBJECTOR/APPLICANT

RULING

1. The Objectors herein have filed an application dated 22nd October, 2019 seeking that the court revokes a grant of letters of administration intestate issued to the petitioner on the 27th November, 2014 on the ground that the same was obtained by making of false statements and concealing material facts. The objector further seeks that pending the prosecution of the said application that the court stays further proceedings in the following cases:-

- (a) Mumias MCL&E No. 324 of 2017
- (b) Mumias MCL&E No. 127 of 2018
- (c) Kakamega MCL&E No. 646 of 2018

2. The application is supported by the affidavit of the 1st Objector, Ali Makokha Wangatia. The 1st Objector depones in his affidavit that this court confirmed a grant of letters of administration over plot Nos. North Wanga/Matungu/985 and 986 in the name of the petitioner. That at the time of confirmation the petitioner did not disclose to the court of the existence of Matungu Land Disputes Tribunal Case no. 8 of 2005 in which the tribunal ordered for one acre of Plot No. 985 to be excised and registered in the name of 1st Objector which order was adopted as a judgment of the court. That the petitioner also did not disclose the existence of Matungu Land Disputes Tribunal Case No. 29 of 2004 in which the Tribunal ordered that Plot No. 986 belonged to the late husband of the 2nd Objector which order was also adopted as a judgment of the court. That after confirmation the petitioner proceeded to register the parcels of land in his name. That the parties moved to the Magistrates' Environment and Land Court and filed the above stated cases wherein various orders were made in respect to the said parcels of land. That in Mumias Magistrates Court Land and Environment Case No. 127 of 2018, the court ordered for eviction of the 2nd Objector from land parcel No. 986. That this was despite the fact that there is another judgment of the court giving the land to the late husband of the 2nd objector. The applicants are seeking that this court issues stay orders in the said Environment and Land Cases.

3. The application was opposed by the petitioner through the preliminary objection filed by **R. V. Mukoya & Co. Advocates**. The grounds on the objection are that the proceedings in Matungu Land Disputes cases were a nullity by dint of lack of letters of administration in the estate of the deceased. That the decisions sought to be enforced were made more than 14 years ago and that they are time barred by dint of Limitation of Actions Act. That Mumias PM Environment and Land Case No. 127 of 2018 between the petitioner and the 2nd respondent and Kakamega CM Environment and Land Case No. 304 of 2018 between the 1st Objector and the respondent are concluded and that the only recourse is for the applicants to file an appeal.

4. I have considered the application and the objection thereto. The suits that the objectors are seeking for stay orders were filed before the Magistrates' Land and Environment Court. Two of the cases are said to be finalized. The court has no jurisdiction to pose its nose into

matters that are the reserve of Environment and Land Court. In that case the objectors should have moved to the Environment and Land Court to seek for any stay orders. As for those cases that are finalized, the Objectors should have preferred appeals with the Environment and Land Court.

5. On the issues raised in the preliminary objection that the proceedings in the Land Disputes Tribunal were nullity for lack of grant of letters of administration and that the decisions thereof are time barred those are issues that, in my view, should be raised in an appeal in the right court – The Environment and Land Court.

6. There are some orders made in the cases filed at the Magistrates' Environment and Land Court that are at variance with other orders issued by other Magistrates' Courts of equal status. The Summons for Confirmation of grant cannot proceed when there are orders in existence that are at variance. The court thereby declines to consider the application for confirmation of grant till after the issues raised herein have been dealt with.

7. The upshot is that the application dated the 22nd October, 2019 lacks merit and is accordingly dismissed with costs to the Petitioner/Respondent.

Delivered, dated and signed at Kakamega this 29th day of May, 2020.

J. N. NJAGI

JUDGE

In the presence of:

Mr. Kundu for the Objectors/Applicants

No appearance for the Petitioner/Respondent

Objectors/Applicants - absent

Petitioner/Respondent - absent

Court Assistant - Polycap

30 days right of appeal.