



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

MISC SUCCESSION NO. 21 OF 2018

IN THE MATTER OF THE ESTATE OF LATE PELILA NGIGE NJERU alias BERIRA NJERU (DECEASED)

AND

VIOLET CIAMBAKA SABARI.....APPLICANT

VERSUS

PHARES GITARI NJERU.....1ST RESPONDENT

CHARLES MUTEGI NJERU.....2ND RESPONDENT

ROBERT NJOKA NJERU.....3RD RESPONDENT

R U L I N G

1. Before this court are two applications by way of summons one dated 21st February 2020 praying for confirmation of grant and the other dated 25th February 2020 asking for leave to appeal and stay of orders issued on 13th February 2020.

2. The two applications have been canvassed simultaneously as a finding in the latter has a bearing on the former application. I will therefore begin with the latter application dated 25th February 2020. In this application Violet Ciambaka Sabari, the applicant is seeking for the following reliefs namely;

(i) Spent

(ii) Spent

(iii) That pending the hearing and determination of the instant application, this honourable court be pleased to issue stay orders staying execution of orders issued by this court on 13th February 2020 and other consequential orders.

(iv) That this court be pleased to grant leave to the applicant to appeal to Court of Appeal against the ruling delivered on 13th February 2020.

(v) That pending the filing of the intended appeal, this court be pleased to issue inhibition orders inhibiting all dealing on the deceased estate namely Magumoni/Thuita/738 including subdivisions.

(vi) Costs of this application.

3. The applicant has listed the following grounds as the basis of her application;

a) That the applicant is greatly aggrieved by the ruling delivered by this court on 13th February 2020 and prays to go to the Court of Appeal.

b) That there is no automatic right of Appeal from the decisions of the High Court to the Court of Appeal on Probate and Administration matters and hence the necessity of leave from this court.

c) That the Applicant has an arguable appeal and that it is in the interest of justice that she is granted leave to appeal to the

Court of Appeal.

d) That the Applicant undertakes to expeditiously prosecute the intended appeal in order not to prejudice Respondents.

e) That unless the orders sought are granted, the Applicant stands to suffer irreparable loss and damage.

4. The Applicant has supported the above grounds with a Supporting Affidavit sworn on 25th February 2020 where she has reiterated the above grounds and added that she is in danger of losing what she calls "***her only home where she has buried her kins.***"

5. She further averred that she has an arguable appeal with overwhelming chances of success. She has however failed to exhibit the draft Memorandum of Appeal to demonstrate the same but I will come back to that issue shortly.

6. A brief background of this matter shows that this cause relates to the estate of the late Pelila Ngige Njeru alias Berira Njeru who died on 10th September 2005. The estate in this matter comprise that property known as L.R Magumoni/Thuita/738. Phares Gitari Njeru was granted the grant in respect to the estate of the late Pelila Ngige Njeru on 15th September 2010 vide ***Chuka Succ. Cause No. 139 of 2008.*** The grant was later confirmed by that court vide certificate of confirmation dated 22nd September 2010.

7. The Applicant through this Misc. Cause filed an application dated 16th July 2018 seeking for revocation of grant on grounds *inter alia* that the Respondent fraudulently obtained the grant and misrepresented facts by not disclosing that she was a beneficiary.

8. This court entertained the said application and after hearing all the parties and witnesses, this court vide its ruling dated 13th February 2020 court found that the Applicant was not a dependant because her late husband namely Erastus Mwalimu through whom she based her claims of dependency, was neither a child nor a dependant of the deceased. This court however revoked the said grant for want of jurisdiction by the lower court. This court further appoint the Respondent herein as the administrator and granted him liberty to apply for confirmation of grant before the expiry of 6 months (statutory period) due to the age of the cause. It is on that basis that the Applicant has moved this court vide summons for confirmation of grant dated 21st February 2020.

9. The Applicant is now seeking for stay of execution of the order issued on 13th February 2020. I have considered the submission filed by the Applicant dated 23rd March 2020 by Applicant's counsel and I must say that the application for stay of execution is completely devoid of merit. There is no basis upon which the Applicant has moved this court because in the first place there are no orders capable of execution from the ruling of this court. The Applicant has not stated whether the Applicant as a result of the ruling of this court has done anything on the ground (read the estate) that has perhaps displaced her or about to displace her. Secondly the contentions advanced by the applicant in her submissions are issues that were canvassed during trial of Summons for Revocation of Grant dated 16th July 2018. This court evaluated the same and rendered itself. I do not find any basis from the application before me to grant stay of execution. The same is misconceived and premature because the grant has not even been confirmed.

10. On the question of leave to appeal, this court finds that the Applicant has also failed to lay evidence before me to persuade me exercise my discretion in her favour. It is true that appeal to the Court of Appeal from a decision of this court exercising its original jurisdiction only lies with leave of this court.

The right to appeal is not automatic and a party should lay basis for the court that there is sufficient reason why the matter should be escalated to the court of Appeal. This court has a discretion based on what is laid before it to grant that leave or decline. Based on what is laid before me there is no basis to enable this court to exercise its discretion in favour of the Applicant. There is no draft Memorandum of Appeal exhibited to even show that the appeal itself is arguable. The long and short of this is that this court finds no merit in the application dated 25th February 2020. The same is dismissed with costs.

11. In view of my finding above, this court finds merit in the summons for confirmation of grant dated 21st February 2020 as the family members have all appended their respective signatures to show that they have agreed on the mode of distribution suggested by the Petitioner/Applicant. For that reason the grant made by this court on 13th February 2020 is hereby confirmed as per paragraph 8 of the affidavit of **PHARES GITARI NJERU** sworn on 21st February 2020.

Dated, signed and delivered at Chuka this 27th day of May 2020.

R.K. LIMO

JUDGE

27/5/2020

Ruling dated, signed and delivered via zoom as well as directly in court in presence of Kirimi for Applicant and Kijaru for Respondent and Violet Ciambaka Sabari.

R.K. LIMO

JUDGE

