

REPUBLIC OF KENYA

IN THE HIGH COURT KENYA

AT KAKAMEGA

SUCCESSION CAUSE NO. 816 OF 2015

IN THE MATTER OF THE ESTATE OF THE LATE PILA MUSA ANG'ALIA ALIAS PILA ANG'ALIA (DECEASED)

RULING

1. The Motion for determination is dated 19th June 2020. It is brought at the instance of Anne Waka Oyalo, who I shall refer hereto as the applicant, seeking for orders that the Deputy Registrar be empowered to sign necessary transfer documents, and that the Officer Commanding (OCS) the Luanda Police Station provides security during survey and demarcation of West/Bunyore/Emusire/1053.
2. The motion is based on the grounds on its face and the facts set out in the supporting affidavit. It is averred that the certificate of confirmation of grant herein was issued on 2nd June 2020, to effect that the estate of the deceased was distributed between the applicant and Damaris Onea Okinda, who I shall hereafter refer to as the respondent, with the two getting 1 acre and 0.9 acres, respectively, out of West/Bunyore/Emusire/1053. The applicant states that it has been impossible to implement the certificate of confirmation as her efforts to complement it have been met with baseless, unreasonable and immense opposition from the respondent.
3. On her part, the respondent opposes the application, through a replying affidavit, that she swore on 6th July 2020. She states that the application is made in bad faith as there are pending objection proceedings in the matter, and the distribution ordered cannot be implemented before the said proceedings are finally disposed of.
4. The matter came up for hearing on 7th July 2020. The applicant urged that the application be allowed, explaining that she was having a hard time implementing the distribution ordered by the court, as the respondent was not co-operative. The respondent stated that there were objection proceedings in the matter that were pending conclusion by the court.
5. The deceased herein, Pila Musa Angaya, died intestate in 1992. The administratrices herein petitioned for representation to the estate, and letters of administration intestate were made them, and a grant duly issued on the 30th January 2017. The said administratrices had their grant confirmed, vide an application for confirmation of grant, dated 19th July 2017, on 6th September 2019, and a certificate of confirmation of grant of even date was duly issued, and amended on 29th May, 2020.
6. It the objector filed an application, dated 18th February 2020, seeking for review and setting aside of the orders made on 6th September 2019. From the proceedings, it is clear that there is an application on record, for review, of the confirmation orders made 6th September 2019, that is pending determination. The determination of that review application could determine the course of the distribution ordered by the court, while that of the instant application, if allowed, would conclude the succession cause or, the administration process, without affording the objector opportunity to argue the application for review of the order on distribution of the estate. It would, therefore, be in the best interests of justice, that the application for review be heard and determined first before any application, relating to implementation of the distribution ordered by the court, is heard.
7. The application herein is premature, as it should not be determined first because of the pendency of the application for review by the objector. The application should be, and is, hereby stood over generally, to await determination of the review application.
8. The matter is scheduled to be mentioned on 25th October 2020, for directions. I direct the objector to serve the application, dated 18th February 2020, on all the parties herein by then, to facilitate the taking of directions, on 25th October 2020, on the disposal of the said application.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 30th DAY OF July, 2020

W MUSYOKA

JUDGE