



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 268 OF 2012

In the Matter of the Estate of Phylis Wairimu Munoru (Deceased)

PETER MURIITHI MUNORU.....PETITIONER

VERSUS

HARRIET KARAMANA GITONGA.....OBJECTOR

WILSON MUTHEE.....INTRESTED PARTY/APPLICANT

JUDGMENT

[1] Before me is Summons expressed to be brought pursuant to Section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules, in which the interested party is inter alia asking the court to set aside/vacate its orders made on 2nd December 2015. Those orders restrained the interested party from closing door No. 2 in plot No. 175 Kawiru market for use by the applicant.

[2] The major gravamen is that the orders of 2nd December 2015 are adverse to the applicant as were issued without hearing him. As such, he was condemned unheard. He stated that the two parties herein colluded to mislead the court in issuing most undeserving orders.

[3] When the matter came up for hearing on 21st February 2017, the court directed that the application be canvassed by way of written submissions. Briefly it was submitted for the interested party that the application was never served on him yet he was the main target of the application. He reinforced the fact that he was not part of the proceedings concerning the said summons yet he was directly named in the order. He continued to state that the consent that was entered into was by advocate for the objector and advocate for the petitioner. According to the interested party that was day-light miscarriage of justice, an abuse of court process and an irregularity. He argued that the Deputy Registrar ought to have ordered that the application be served on him to allow him to be heard. For those reasons, he beseeched the court to vacate the order dated 2nd December 2015.

[4] On the other hand it was submitted for the objector that the injunctive orders were made for the sole purpose of preserving the estate in light of the fact that the objector had already filed summons seeking revocation of grant issued to the petitioner but not yet confirmed.

ANALYSIS AND DETERMINATION

[5] I have carefully considered this application and the rival pleadings by the parties. A careful perusal of the record shows that when the matter came up for mention on 19th October 2015, there was no appearance by the parties whereupon the court scheduled a further mention date on 2nd December 2015. On the appointed date, Mr. Rimita for objector intimated to court that the parties had agreed by consent to have door No. 2 on plot No. 175 Kawiria market opened for use by the objector. The court subsequently *inter alia* ordered that the interested party be restrained from preventing use of door No. 2 as prayed by the objector. It is evident that the interested party was not present in court and neither was he represented when the said order was made. Similarly, there is nothing on record to show that he was served. The interested party was clearly condemned unheard.

[6] Accordingly, the application dated 13th February 2016 is merited and is allowed as prayed. This being a succession matter there will be no order as to costs.

Dated signed and delivered in open court this 24th January 2019

F. GIKONYO

JUDGE

In presence of

M/s Munga for Rimita

F. GIKONYO

JUDGE