



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MIGORI

SUCCESSION CAUSE NO. 425 OF 2015

(Formerly Rongo Principal Magistrate's Succession Cause No. 298 of 2012)

IN THE MATTER OF THE ESTATE OF TOM OTIENO NGOE (DECEASED)

-between-

MARY ADHIAMBO KOGO.....PETITIONER/RESPONDENT

-versus-

FLORENCE ARACHI OMOROH

SALLY ANYANGO OTIENO.....OBJECTORS/APPLICANTS

RULING

1. Before me for consideration is a Notice of Motion dated 18/01/2019 and filed on 21/01/2019 (hereinafter referred to as '**the application**') seeking the setting aside of the order dismissing the Summons for Revocation dated 26/10/2015 and filed on 27/10/2015 (hereinafter referred to as '**the Summons**') made on 04/01/2019.
2. The application was supported by the Affidavit of **Florence Arachi Omoroh** (the first Objector herein) sworn on 18/01/2019 which detailed the background of the application. The Objector further swore another affidavit headed 'Response to Replying Affidavit' on 06/02/2019 which was evenly filed.
3. The application was opposed. The Petitioner herein, **Mary Adhiambo Okogo**, filed an affidavit which in essence was in opposition to the application but it was headed 'Supporting Affidavit'. It was sworn on 01/02/2019 and evenly filed.
4. The chequered history of this matter is clear. It began from Rongo Law Courts where a Grant of Letters of Administration Intestate was issued to the Petitioner on 13/01/2013 and confirmed on 18/11/2013 where the estate property was distributed. It is that status which prompted the filing of the application. The application was partly heard before me by way of oral evidence. That was on 22/06/2016.
5. The application was thereafter not listed for hearing until 27/04/2018 where a representative of the Objector's firm of Advocates fixed the same for further hearing. The hearing was scheduled for 23/05/2018 on which day there was no attendance of any party. This Court ordered the further prosecution of the application within 90 days otherwise the Summons would stand dismissed. There was no action until 04/01/2019 when this Court acted on the order made on 23/05/2018 and formally dismissed the Summons and closed the matter as the estate had been duly distributed. It is that order of this Court that led to the application.
6. The application was heard by way written submissions where Counsel for the Objector filed his submissions and List of Authorities. The Petitioner did not. There was highlighting of the submissions on which day the Court allowed the Counsel for Petitioner who tendered his oral opposition to the application.
7. I have carefully considered the application. I partly heard the Summons and I am clear in my mind on its nature. The main concern in this matter as a whole was the slow pace upon which the Objector prosecuted the Summons. It took the Objector close to two years to fix the Summons for further hearing and even on the hearing date the Objector and her Counsel never appeared before Court. They were only awoken from their slumber land by the dismissal of the Summons.
8. I am aware of the order made by this Court calling for Kisumu High Court Succession No. 307 of 2007 for perusal. The file was availed but it has no relevance to this Cause. It relates to the Estate of one **Cecil Waoke Tsanji (Deceased)** and the property involved therein was

only the Death Gratuity.

9. Based on the sensitive nature of this matter and the fact that it is part-heard, I will reluctantly exercise leniency on the part of the Objector and opt to proceed on with the further hearing of the Summons. However, the Objector is put on notice that any further unwarranted delay on her part shall not be entertained. The orders made on 04/01/2019 be are hereby vacated and the Summons is reinstated for further hearing. Costs of the application shall be in cause.

10. To facilitate further hearing parties shall fix a hearing date before me today.

11. Orders accordingly.

DELIVERED, DATED and SIGNED at MIGORI this 28th day of March 2019

A.C. MRIMA

JUDGE

Ruling delivered in open court and in the presence of: -

Mr. Brian Mboya Counsel instructed by the firm of Messrs. Tom Mboya & Co. Advocates for the Objector/Applicant.

Mr. Osoro Counsel instructed by the firm of Messrs. Moriasi Osoro & Co. Advocates for the Petitioner/Respondent.

Evelyne Nyauke – Court Assistant