



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 196 OF 2013

IN THE MATTER OF THE ESTATE OF M'MBUTURA M'TWANTHUKU - DCD

TABITHA NJIRU N'RINGERA PETITIONER/RESPONDENT

VERSUS

KABURU M'MBUTURA APPLICANT/OBJECTOR

RULING

1. By an application dated 11th March 2019 Kaburu M'Mbutura – Objector/applicant sought under section 47 of the Law Succession Act and Rule 73 of P&A Rules that the Administrator Tabitha Njiru M'Ringera be replaced and that he should instead be made the Administrator to ensure confirmed grant is implemented.
2. The application was supported by the grounds as the face of the application namely that the petitioner had declined and had vowed never to sign any transmission or implement the grant;
3. That the grant had become inoperative since the Administrator had declined to proceed with diligence to implement the grant despite the matter having been heard and determined.
4. The application was also supported by the affidavit of Kaburu M'Mbutura sworn on 11th March 2019 and averred that after the ruling in this matter was delivered on 29th November 2018 awarding him LE Abothuguchi/Mariene/104 the petitioner filed a Notice of Appeal and applied for stay of execution which application was dismissed on 26th February 2019.
5. That although the petitioner knows the deceased left the original title with applicant she has declined to execute transmission documents. Applicant said the petitioner had no further interest in the estate and that the court should order the lifting of caution lodged by the petitioner's husband M'Ringera Mbutura as it is no longer necessary as it has been overtaken by events.
6. In response to the application dated 9th May 2019 the Petitioner's counsel filed an objection with grounds inter alia that:-
7. The application is fatally defective, vexatious, scandalous and an abuse of the court process
8. That the objector's application is non-starter ab initio
9. That the court does not have jurisdiction to hear and/or determine the issues raised in the application and same should be struck out and/or dismissed with costs to petitioner.
10. The petitioner in support of preliminary objection submitted that caution was placed. On 18th September 1974 before the cause herein commenced and that the applicant should file suit in Environmental and Land Court to remove the caution. It was submitted that this court became functus officio the moment it issued a certificate of grant and that other interests touching on the subject land are preserved of ELC. The court was urged to uphold P. O/Objector.
11. The applicant on the other hand submitted that this court has original jurisdiction in all land and criminal matters and that section 47 of the Law of Succession Act re-emphasizes the said unfettered jurisdiction over succession matters. It was argued that the Preliminary Objection is unnecessary and should be struck out and application dated 11.3.2019 be allowed in the interest of justice.
12. From the submission in respect of the preliminary objection and application dated 11.3.2019 this court finds that there is no satisfactory ground raised why the petitioner thinks that this court doesn't have jurisdiction to remove a caution that was placed over 40 years ago by the petitioner's husband now deceased over suitland that has been established by this court should devolve to the applicant/objector herein. It is

the view of this court that the preliminary objection is a non starter and a ploy to delay the applicants enjoyment of his judgement.

13. The caution stands on the way of that judgment which was passed by this court and there is absolutely no legal barrier to the court that that confirmed the grant removing such obstruction. This claim by the objector/petitioner that the court downs its tools the moment it confirms a grant is double speak because the petitioner has herself come back to this court to seek orders subsequent to the confirmation of grant. The preliminary objection is overruled. The application dated 11th March 2019 is allowed. The applicant shall now become the Administrator considering that the petitioner herein has failed to be accountable to the court. Grant to issue in the name of the Applicant as well as a certificate of confirmation devolving suit land to the applicant. Costs of preliminary objection and costs of application dated 11.3.2019 to go to Kaburu M'Mbutura the applicant.

HON. A.ONG'INJO

JUDGE

RULING DELIVERED, SIGNED AND DATED THIS 20TH DAY OF JUNE 2019.

HON. A.ONG'INJO

JUDGE

IN THE PRESENCE OF:

C/A:- Kinoti

PETITIONER/RESPONDENT – Mr Ojiambo holding brief for Ngunjiri

APPLICANT/OBJECTOR:- Mr Gikunda Anampiu Advocate No appearance

HON. A.ONG'INJO

JUDGE