



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

SUCCESSION CAUSE NO. 97 OF 2000

IN THE ESTATE OF THE LATE MONGENI WEPUKHULU (DECEASED)

BETWEEN

PATRICK SIMIYU MONGENIPETITIONER/APPLICANT

VERSES

ROBERT BARASA WASIKE.....RESPONDENT

RULING

1. This court on 1st April, 2019 gave directions that the objection proceedings dated 15th March, 2017 be heard by way of oral evidence. Midway the cross-examination of the Petitioner/Applicant PATRICK SIMIYU MONGENI it occurred to the court that Hon. Ombija J (as he then was) on 1st July, 2010 had made a ruling regarding the estate which was later confirmed as per the grant dated 18th October, 2018 in which the suit parcel of land namely TRANS NZOIA / SINYERERE/368 was dealt with.
2. From the proceedings on record, there was no appeal or review against the said ruling by any of the parties. This court therefore suo moto struck out the objection proceedings on the 14th May 2019.
3. The Respondent ROBERT BARASA WASIKE file the application dated 21st of May, 2019 in which he sought to compel the administrator PATRICK SIMIYU MONGENI to sign the transfer documents so that he could have his title. He also prayed in the alternative that the Deputy Registrar to execute the same in the event that the administrator refuses.
4. The Respondent then vide his replying affidavit dated 11th June, 2019 has argued that he has not refused to sign the transfer documents but he is not happy the way his objection proceedings was dismissed. He has instead file a motion dated 12th June, 2019 in which he seeks to appeal against the decision dismissing the objection proceedings.
5. He said that he was not happy with the orders giving the portion of the land to the Respondent. In short he wanted the objection proceedings to go through the full haul.
6. The Respondent vide the replying affidavit dated 19th June, 2019 has argued that the same is purely a waste of time since he did not appeal against the ruling mentioned above of Justice Ombija.
7. The court has seen and considered the application for stay pending appeal against the history of this matter. Whereas it is true that the Applicant has a right of appeal, in this case I find that to grant him stay pending appeal militates against the interest of the Respondent.
8. It is clear that the decision of Ombija J was never appealed against. The objection proceedings which this court halted were based on the fact that what it had been requested to adjudicate over had been decided 9 years ago. To proceed with it would have been sitting as an appellate court over the same. The respondent had been given the portion of the estate rightfully by a legal process.
9. Consequently I do not find any merit in the application dated 12th June, 2019 and dismiss it for being inordinately late in the day. Nothing stops the applicant from proceeding with the appeal seeing that he has already filed a notice of appeal.
10. On the other hand the application dated 21st of May, 2019 is allowed. The Respondent is hereby granted 14 days from the date herein to sign the transfer forms and in default the Deputy Registrar of this court be at liberty to sign the same.
11. Each party shall meet their respective costs.

Dated signed and delivered in open court at Kitale this 23rd day of July 2019.

H K CHEMITEI

JUDGE

23/7/19

In the presence of:-

Applicant – present

Bororio for the Respodnent

Court Assistant -Kirong

Ruling read in open court.