



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

SUCCESSION CAUSE NO. 884 OF 2015

IN THE MATTER OF THE ESTATE OF JOHN OBONYO AMBANI (DECEASED)

RULING

1. The application that I am called upon to determine is the summons for confirmation of grant dated 15th February 2017. It is brought by Melisa Nyagoha Ombonyo, seeking confirmation of a grant that she claims was made to her. A protest affidavit was sworn on 13th October 2017, in objection to the confirmation application, by Antony Nashali Ombonyo. Directions were subsequently taken for disposal of the summons by way of written submissions.

2. I have carefully perused the record before me in the process of preparing a ruling on the said application, and I doubt whether any ruling can be prepared to dispose of the application. I do not think that there is a grant in this cause that can be confirmed.

3. The proceedings herein commenced by way of a summons for revocation of grant dated 16th December 2015. The grant sought to be revoked had been made on 5th May 2014, in Vihiga SPMCSC No. 10 of 2013, to Antony Nashali Ombonyo. The file in Vihiga SPMCSC No. 10 of 2013 was not called for, and was, therefore, never availed, and is not part of these proceedings.

4. The matter came up for directions on 16th December 2015, before Mwita J., and the parties seemed to have been pushing for the disposal of the summons for revocation of grant by way of *viva voce* evidence. The court declined and delivered a ruling in the following terms:

*“Having perused the summons dated 16/11/2015 and the replying affidavit by the petitioner sworn on 29/3/2016, it is clear that the objector is a daughter to the deceased. She is also mentioned in the petition for grant. However, she takes not from a share. For that admission, I do not see why the summons should proceed to hearing *viva voce*. I therefore make the following orders*

(1) The order confirming the grant on 9/12/2014 by the Principal Magistrate’s Court at Vihiga is hereby set aside and the certificate of confirmation dated 9/12/2014 cancelled.

(2) Subdivisions to parcel number South Maragoli/Bugonda/2506 and Kakamega/Bugonda/1906 are hereby cancelled and the parcel restored into the name of John Obonyo Ambani (deceased)

(3) The petitioner do file a fresh summons for confirmation bearing in mind the interests of all beneficiaries within sixty (60) days from the date herein and serve the objector.

(4) In default of No. 3 above, the objector shall be at liberty to file summons for confirmation

(5) No order as to costs.”

5. My understanding of the orders of 16th December 2015 is that the grant made in Vihiga SPMCSC No. 10 of 2013 to Antony Ombonyo Ambani was not revoked, instead what the court did was to set aside the orders that the trial court had made at the confirmation stage of that matter. The court then directed that the administrator appointed in Vihiga SPMCSC No. 10 of 2013 files a fresh application for confirmation of his grant. That did not mean that the parties file a summons for confirmation of grant in this cause, for there is no grant in this cause that can be confirmed.

6. The grant of re-presentation with respect to the estate of the deceased was not made by this court, but by the Vihiga Principal Magistrates Court in Vihiga SPMCSC No. 10 of 2013. It is that court that is seized of the matter of the administration of the estate. The grant that Antony Ombonyo Ambani holds is that which was granted to him in Vihiga SPMCSC No. 10 of 2013. The High Court did not revoke it, and it did not make another grant to either him or any other person. No petition was filed in the instant cause and the court file in Vihiga SPMCSC No. 10 of 2013 was not called for, nor availed, nor made part of the proceedings herein. There would be no basis, therefore, for this court to make

any grant of representation to anyone. I need to emphasize that none was made.

7. It follows, therefore, that the orders made by Mwita J envisaged that the administrator, Antony Ombonyo Ambani, would file his summons for confirmation of his grant in Vihiga SPMCSC No. 10 of 2013. I would reiterate that the proceedings herein were initiated by way of summons for revocation of the grant made in Vihiga SPMCSC No. 10 of 2013. The said summons has been disposed of. As a fresh grant was not made by this court, which would be capable of being confirmed by it, there can, therefore, be no basis at all for any application to be made for confirmation of grant in this cause, for there is simply no grant in this cause. This court became *functus officio* on 16th December 2015, after it made the order referred to in paragraph 2 hereabove. All the other proceedings carried out thereafter are all null and void. The orders made on 16th December 2015 were for compliance in Vihiga SPMCSC No. 10 of 2013 and not in this cause.

8. To move the matter forward, I hereby direct that the file herein is to be transferred to the Vihiga Principal Magistrate's Court for consolidation with Vihiga SPMCSC No. 10 of 2013. Thereafter, the parties shall herein comply with the orders of Mwita J of 16th December 2015 by filing the application envisaged in that order in Vihiga SPMCSC No. 10 of 2013 for determination within that cause.

9. It is so ordered.

10. Any party aggrieved by the orders that I have made, herein above, has twenty-eight (28) days to move the Court of Appeal appropriately. There shall be no orders for costs.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 31ST DAY OF OCTOBER, 2019

W. MUSYOKA

JUDGE