



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

SUCCESSION CAUSE NO.220 OF 2014

IN THE MATTER OF THE ESTATE OF THE LATE:

ZABLON KOMINGOI MATAGET *alias* KOMINGOI MATAGET...DECEASED

AND

ANDREW CHERUIYOT.....1ST PETITIONER

ANNAH MATAGET.....2ND PETITIONER/APPLICANT

STANLEY CHERUIYOT.....3RD PETITIONER

VERSUS

KENNEDY KIPLANGAT KIGEN.....1ST APPLICANT

RICHARD KIPRONO NGENO.....2ND APPLICANT

RULING

1. Before me is an application by way of Summons dated 10th May 2019 filed by Annah C. Mataget (2nd petitioner) through counsel Enock Anyona Miruka & Co. Advocates with the main prayer being that this court be pleased to set aside or review its order of 01/04/2019 for arbitration.

2. The application has grounds on the face of the Summons and is supported by the affidavit of the applicant sworn on 10th May 2019 deponing that there was no application by any of the parties herein seeking arbitration.

3. The application is opposed through grounds of opposition filed on 20th May 2019 by Migiro & Company Advocates for the 1st and 3rd petitioners mainly on the grounds that counsel for the parties consented to reference to the arbitration, and that this application was brought in bad faith and was an abuse of court process.

4. Parties' counsel, by consent filed written submissions to the application.

5. I have perused the court record. On 1st April 2019 Muya J. recorded as follows:-

“Mention on 3/5/2019. Parties to negotiate an out of court settlement. The local chief to arbitrate the issue of distribution.”

6. Though Mr. Migiro for the 1st and 3rd petitioner has argued that the above court order was recorded on the basis of a consent by counsel, the record does not say so. Both Mr. Migiro and Mr. Miruka were present in court as well as the petitioners when Mr. Migiro informed the court that it was for the application seeking revocation of grant, when the court on its own motion went on to issue the above orders for arbitration.

7. I have now been told that Mumbi Ngugi J. had determined the matter through a substantive decision, and I have myself seen and perused ruling delivered by the Judge on 14th June 2018. That ruling actually determined the distribution of the assets and division of land between three (3) houses, how to deal with two motor vehicles, and also money in two accounts one with Buret Tea Sacco, and the other with Kenya Commercial Bank Litein, consequent upon which Certificate of Confirmed Grant was signed.

8. There is also a Notice of Appeal to the Court of Appeal dated 27th June 2018 filed, which according to the Court of Appeal rules is taken to be an appeal. In addition, there is also an application pending for stay of execution of the Certificate of Confirmed Grant for Letters of Administration which was issued on 14th June 2018 and signed on the basis of the above court ruling.

9. It follows therefore, that the orders of this court of 1st April 2019 for arbitration, only creates confusion in a matter that has already been substantively determined by the court. There were no consent orders recorded, and even if there were such consent orders, in my view, they would not stand the test of legal efficacy, as they would seek to bring back to this court a matter that has already been substantively determined, which is wrong.

10. In the interests of justice and fair play therefore, I vacate the directional orders of this court issued on 1/4/2019 asking parties to go for arbitration. This means that parties are not bound to go for arbitration, and any arbitration done therefrom, is of no legal value and effect.

Dated and delivered at Kericho this 24th day of October 2019.

George Dulu

JUDGE