



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 248 OF 2001
IN THE MATTER OF THE ESTATE OF KAMANU WANGEWA
(DECEASED)

RULING

1. On 27th February 2017, Mr. Njogu, for the applicant in the application dated 19th November 2013, sought leave to withdraw the said application. That plea was objected to by the other parties. In the end I allowed the withdrawal. On 12th July 2017 I granted leave to the administrators to file for confirmation of grant following the withdrawal of the one that was on record.
2. On 21st July 2017, Michael Kamanu Wangewa filed an application of even date for confirmation of grant. To that application Michael Karungari Kamanu filed a notice of preliminary objection, dated September 2017. His principal ground appears to be that the cause in HCSC No. 248 of 2001 does not exist and it cannot, therefore, provide basis for the mounting of a confirmation application. He argues that the cause which is alive is HCSC No. 2989 of 2001, where the grant therein was confirmed and has never been revoked.
3. On 18th September 2017 I directed the parties to argue the preliminary objection orally on 4th October 2017. Come 4th October 2017, the said directions were varied, at the request of the parties, so that the said preliminary objection was to be determined on the basis of written submissions. The parties have complied with the directions to file written submissions. I have read through the written submissions lodged on the record, and noted the arguments raised by the three parties.
4. The only thing for me to determine is whether the cause herein exists, so that if it does then the summons for confirmation of grant dated 21st July 2017 would be valid and would proceed to its logical conclusion. If not, then the same would have no foundation and would be a candidate for striking out.
5. It would appear from the record before me, that two succession causes were initiated in respect of the estate of the deceased person herein, being the instant cause, HCSC No. 248 of 2001, and HCSC No. 2989 of 2001. On 23rd July 2008 and 25th September 2008, orders were made herein for the court file in HCSC No. 2989 of 2001 to be made available before the Judge for directions together with the instant file. On 25th September 2008 a specific order was made by consent for consolidation of the two causes, with the lead file being HCSC No. 248 of 2001. For avoidance of doubt the order was recorded by Rawal J is in the following words-

‘By consent from both counsel the two aforesaid causes be consolidated, the lead file being P&A 248 OF 2001.

The court file for P&A 2989/01 to be brought in the aforesaid file by the Regi. (sic) ...’

Rawal J made further orders on 26th November 2008, recorded as follows -

‘By consent the issue of the continuance of the grantees of letters of Adm. (sic) in P&A 2989/01 is now withdrawn.

Given the succession ca (sic) No. 248/01 is hereby withdrawn by consent with no order as to costs.

Now I see that the above position is not factual. The rectified grant issued on 2nd May 2008 is in effect. By consent cert. (sic) of confirmation of grant dated 13th May 2003 is revoked ...’

6. My understanding of what transpired on 25th September 2008 is that the causes in HCSC No. 248 of 2001 and HCSC No. 2989 of 2001 were consolidated into HCSC No. 248 of 2001. The said consolidation meant that they became one file, being HCSC No. 248 of 2001. The causes in HCSC No. 248 of 2001 and HCSC No. 2989 of 2001 collapsed into one and ceased to exist as separate causes. Then on 26th November 2008 the consolidated cause, that is to say HCSC No. 248 of 2001, was withdrawn.

7. I have scrupulously perused through the record of the events after 26th November 2008, and I have not come across a minute of any order undoing the order of 26th November 2008.

8. Clearly, therefore, this cause does not exist. There is no foundation upon which the summons for confirmation of grant dated 21st July 2017 can be mounted. The said application has nowhere to stand. It is hanging. It cannot have a life of its own without a base. It is available for striking out, and I hereby strike it out, with no order as to costs.

9. Any party aggrieved by the order made in paragraph 8 above is at liberty to appeal against the said order in the next twenty-eight (28) days at the Court of Appeal.

DATED, SIGNED and DELIVERED at NAIROBI this 14TH DAY OF JUNE, 2018.

W. MUSYOKA

JUDGE