



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

SUCCESSION CAUSE NO. 395 OF 2012

IN THE MATTER OF THE ESTATE OF THE LATE MINGILI

ORANDA & BARASA ORADA (DECEASED)

AND

STEPHEN OKOTA BARASA.....PETITIONER

VERSUS

MICHAEL RABARE RAMOYA.....1ST OBJECTOR

RAJAB IBRAHIM WESONGA.....2ND OBJECTOR

BRIAN OSINYA WANYAMA.....3RD OBJECTOR

RULING

(Chamber summons application dated 2nd May, 2016)

1. Through the chamber summons application dated 2nd May, 2016 the Applicant/Petitioner Stephen Okota Barasa seeks orders as follows:

“1) That the order of stay of these proceedings issued on 19.1.2016 or any other [date] be and is hereby set aside.

2) That the Petitioner and or any other party be at liberty to proceed with confirmation and or this cause accordingly.

3) That the summons for confirmation of grant dated 7.5.15 herein be allowed as prayed.

4) That costs be provided for.”

2. The application which is brought under rules 49 and 73 of the Probate and Administration Rules and Section 71(2) of the Law of Succession Act is supported by an affidavit sworn by the Applicant on 3rd May, 2016.

3. Michael Rabare Ramoya, the 1st Respondent, Rajab Ibrahim Wesonga, the 2nd Respondent and Brian Osinya Wanyama, the 3rd Respondent oppose the application through a replying affidavit sworn by their advocate, Joseph Vitalis Juma on 6th September, 2016 and a further affidavit of the 1st Respondent sworn on 24th November, 2016.

4. In brief, the Applicant petitioned this court for grant of letters of administration for the estates Mingili Orada and Barasa Orada. Before the grant could be confirmed, the respondents in April, 2015 protested against the proposed distribution of the estate claiming interest as purchasers. The parties then asked for time to discuss the matter.

5. On 30th September, 2015, the parties agreed that a surveyor visits LR No. Bukhayo/Mundika/349 and L.R. No. Bukhayo/Mundika/351 and draw a sketch map of the parcels of land indicating where each party resides or occupies and the respective acreage. The surveyor was to file a report within 45 days from the date of the consent.

6. However, on 30th October, 2015 the Applicant/Petitioner moved the Court through a notice of motion application seeking stay of the order of 30th September, 2015. On 19th January, 2016 the parties entered a consent allowing the application of 30th October, 2015 and thereby staying the consent of 30th September, 2015. These proceedings were stayed for 90 days. Though not captured in the court record, the parties herein informed this court that the 90 days were meant to give time to the respondents to commence proceedings in the Environment and Land Court. At the expiry of the said 90 days, the Applicant filed the instant application.

7. The Applicant's case is that he has never been served with any papers showing that the respondents have filed any case in the appropriate court. Further, that the respondents are not the beneficiaries of the estates of the deceased persons to which these proceedings relate.

8. In reply, the respondents aver that they filed Busia H.C. ELC No. 36 of 2016 on 19th April, 2016 and the court papers were served on the Respondent on 13th May, 2016. They contend that as they have already filed the matter before the Environment and Land Court, these proceedings should be stayed awaiting the outcome of the matter in the Environment and Land Court.

9. The parties herein concur that the respondents' claim against the estate of the deceased persons is that of purchasers. The respondents aver that the land in question is fully occupied and there is nothing to be distributed by the Applicant.

10. Succession proceedings are in the nature of handing over the baton in a relay race. The function of the court is to ensure that the property left behind by a deceased person is passed on to those who are legally entitled to that property. Generally, any disputes between the beneficiaries and third parties are not addressed through the proceedings. Such issues are dealt with by commencing appropriate proceedings at the proper court.

11. In the case at hand, the respondents have already placed their claim before the Environment and Land Court which is the competent arbiter for a dispute like theirs. This matter cannot wait the conclusion of a matter before another court. Any claim the respondents may have against the estate of the deceased persons will be addressed by the Environment and Land Court which also has the power to preserve the property once it passes into the hands of the Applicant/Petitioner. There is therefore no good reason for holding back the Applicant and the other beneficiaries of the estate of the deceased persons from benefiting from transmission of any property belonging to the deceased persons to them.

12. The chamber summons application which is the subject of this ruling is therefore dealt with as hereunder. The order of stay issued on 19th January, 2016 lapsed at the end of 90 days and there is therefore no reason for setting aside an order that has already lapsed. The Applicant is therefore allowed to proceed with the confirmation process.

13. I have perused the Applicant's summons for confirmation of grant dated 7th May, 2015 and filed on 15th May, 2015 and find that attached to the application is a consent signed by the beneficiaries on 11th May, 2015 agreeing with the proposed distribution. The summons for confirmation of grant dated 7th May, 2015 is therefore allowed as prayed with L.R. No. Bukhoyo/Mundika/349 being registered in the name of the Applicant, Stephen Okota Barasa.

14. Since the parties are still engaged in another matter, I make no orders as to costs meaning that each party will meet own costs of these proceedings.

Dated, signed and delivered at Busia this 31st day of January, 2017.

W. KORIR,

JUDGE OF THE HIGH COURT