



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
SUCCESSION CAUSE NO. 208 OF 2003
IN THE MATTER OF THE ESTATE OF MUNGAI WAMWEA (DECEASED)

RULING

1. On 28th November 2014 I delivered a ruling where I allowed an application dated 18th February 2013. The effect of the order was to purport to dismiss an application dated 31st January 2003 for want of prosecution. The said application had sought revocation of a grant made by a lower court.
2. The administrators of the estate of the deceased, that is to say Ngugi Mungai and Njogu Mungai, have now moved this court by a summons dated 22nd November 2016, inviting me to review or set aside the order made on 28th November 2014. They argue that the court was misled into making that order as the application dated 31st January 2003 had been dealt with by Koome J. on 8th October 2003, and allowed, and therefore it was not available for dismissal through the application dated 18th February 2013.
3. The respondent to the application dated 22nd November 2016, David Kamande Jeremiah, has replied to it vide an affidavit sworn on 31st January 2017. He states that the application dated 31st January 2003 was properly dismissed through the application dated 18th February 2013, vide the orders of 28th November 2014. He concedes the orders made by Koome J. on 8th October 2003, saying that the same were not contradicted by the order made on 28th November 2014.
4. The determination of the application dated 22nd November 2014 is dependent on the orders that Koome J. made on 8th October 2003. I have carefully perused the handwritten record before me, and I have noted that the minutes for 8th October 2003 are missing. It would appear that the record for the period between 25th September 2003 and 17th September 2007 is missing, I have therefore have no original record to confirm whether any such orders were ever made.
5. I have noted however that both sides agree that Koome J. made such orders, and both have attached copies of the formal order extracted therefrom on 31st October 2003. The orders made on 8th October 2003 on the application dated 21st January 2003 were extracted as follows –

'IT IS HEREBY ORDERED –

1. *THAT the grant of administration issued to Njogu Mungai on 30.4.99 and confirmed on 18.2.2002 in Murang'a Succession Cause No. 286 of 1998 be and is hereby revoked;*
2. *THAT afresh grant be issued to Ngugi Mungai and Njogu Mungai under section 70 of the the*

6. I have perused the court record, and I have encountered the original formal order extracted on 21st October 2003 on the orders of 8th October 2003 is in the court file, although the handwritten record of the said order is not in the file.

7. I agree with the applicants that the court was misled to make the order of 28th November 2014. The application dated 31st January 2003 was determined on 8th October 2003. It was thereafter not available for dismissal in the manner proposed by the respondent in his application dated 18th February 2013. There was nothing dismiss for want of prosecution. The orders made on 28th November 2014 ought not to have been made.

8. I shall accordingly make the following orders –

a. That I shall allow the application dated 22nd November 2016 in the terms proposed - the orders made on 28th November 2014 are hereby set aside, and the orders made by Koome J. on 8th October 2003 are hereby upheld;

b. That the administrators shall cause the application dated 13th November 2016 to be set down for mention for directions on disposal;

c. That the estate comprises of assets exclusively situate within Murang'a County, and I shall accordingly order that the matter be transferred to the High Court of Kenya at Murang'a for final disposal; and

d. That the applicants shall have the costs of the application.

DATED, SIGNED and DELIVERED at NAIROBI this 29TH DAY OF SEPTEMBER, 2017.

W. MUSYOKA

JUDGE