



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

SUCCESSION CAUSE NO.576 OF 2012

IN THE MATTER OF THE ESTATE OF MARGARET KEDOGO – DECEASED

KENNEDY LIDALI OYANGI.....PETITIONER/RESPONDENT

VERSUS

AGGREY ALUKHABA MMUSI.....OBJECTOR/RESPONDENT

RULING

1. On 8<sup>th</sup> June, 2012, **Kennedy Lidali Oyangi**, petitioner, petitioned for a grant of representation intestate for the estate of the late **Margaret Kadogo Oyangi**, in his capacity as son to the deceased. He listed **Miriam Endendwa Oyagi, Judith Kasidi Oyangi, Alice Endoshi Oyangi, Joyce Kahati Oyangi, Kennedy Lidali Oyangi, Joyce Kahai Oyangi** and **Violet Kasoha Oyangi**, all children of the deceased as beneficiaries. The only asset forming the estate of the deceased was identified as **Parcel Number Kakamega/Mugomari/1174**.

2. On 17<sup>th</sup> August, 2012, the same day Notice appeared in the Kenya Gazette, **Aggrey Alukhaba Mmusi** lodged a notice objecting to making a grant. The ground as they appear on the Notice, were that the deceased fraudulently registered herself as proprietor of the parcel of land forming her estate. The objector also lodged a cross petition for a grant to himself, dated 9<sup>th</sup> November, 2012 and filed in court on 9<sup>th</sup> November, 2012.

3. That objection came up for hearing before **Chitembwe, J.** on 26<sup>th</sup> February, 2013 in the presence of **Mr Mango**, learned counsel for the petitioner, and the objector acting in person. The learned Judge ordered a grant to issue to the petitioner and directed the petitioner to file summons for confirmation. Directions were that the matter be heard by way of oral evidence, the objector was to be the plaintiff and the petitioner, the defendant and parties were at liberty to call witnesses. The matter was then fixed for mention on 21<sup>st</sup> May, 2014.

4. Nothing of substance happened until 4<sup>th</sup> November, 2014 when the matter appeared before **Sitati, J.** but did not proceed. The cause finally took off on 11<sup>th</sup> May, 2015 when the objector testified as PW1.

5. The cause came before me on 10<sup>th</sup> November, 2016 and being a part heard and on being told that the objection was on making a grant, I took two witnesses for the objector and the petitioner in defence. Parties the closed their case and I reserved a ruling.

6. In the course of perusing the file preparing to write the ruling, I noticed that the objection had been delt with, a grant issued, and the petitioner ordered to file summons for confirmation. However, there is no summons for confirmation in the court file. I doubt whether one was ever filed. The petitioner simply never complied with the orders of 26<sup>th</sup> February, 2014.

7. **A grant of representation** having issued, and there being no summons for confirmation, there is no decision the court cam make because there is no dispute between it for determination.

Consequently, I give the following directions:-

- 1) The petitioner do file summons for confirmation of Grant within thirty (30) days from the date hereof and serve the same on the objector.
- 2) The objector do file and serve a protest, if any, within thirty (30) days from the date of service of the summons for confirmation of Grant.
- 3) Parties to take dates at the registry.

**Dated and delivered at Kakamega this 30<sup>th</sup> day of November, 2016.**

**E.C. MWITA**

**JUDGE**