



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**SUCCESSION CAUSE NO. 1501 OF 1993**

**IN THE MATTER OF THE ESTATE OF KATUVI MUSAU (DECEASED)**

**RULING**

1. The application I am called upon to determine is a Motion dated 15<sup>th</sup> September 2015. It seeks three principal orders:-

(a) A order to restrain the administrator from selling transferring or alienating or in any way dealing with the estate in a manner that may prejudice the beneficiaries pending the hearing and determination of the objection proceedings herein;

(b) Pending hearing and determination of the Motion an injunction to issue restraining the administrator from dealing in any way with the assets listed in the application; and

(c) That the restraining orders upon being granted to be served upon the Lands Registrar responsible for Machakos County.

2. As worded the application dated 15<sup>th</sup> September 2015 only sought one substantive order, the restraint on the administrator from dealing with the estate in a manner prejudicial to the beneficiaries pending the hearing of the pending objection proceedings. The other two prayers sought supplementary orders. One, for orders to subsist pending the hearing and determination of the Motion. This second prayer could only be addressed at the first instance. The third order related to service of the restraint order, if granted, upon the lands office.

3. The application was placed before Achode J. on 16<sup>th</sup> September 2015. It was certified urgent and direction given directions as to service and disposal. More crucially, the same was granted in terms of prayer (b) thereof.

4. A formal order was extracted from the order made by Achode J. on 16<sup>th</sup> September 2015, and issued on 21<sup>st</sup> September 2015. Order 4 thereof read as follows:-

*‘4. THAT the petitioner/respondent be and is hereby temporarily restrained from selling, transferring, alienating, charging or in any way dealing with the estate in a manner that may prejudice the beneficiaries until the hearing inter partes of the objection proceedings.’*

5. The effect of order 4 of the orders made on 16<sup>th</sup> September 2015 was to fully and effectually dispose of the Motion dated 15<sup>th</sup> September 2015 in its entirety. That would mean that there is nothing remaining for me to determine.

6. Prayer (a) of the said application was spent as it sought the certification of the matter as urgent and the court did so certify it. Prayer (c) was also spent as it sought the order pending hearing and determination of the application. The order sought was therefore temporary, meant to subsist during the pendency of the hearing of the Motion. It was not to be granted at the determination of the Motion. The temporary order sought ought to have been granted on 16<sup>th</sup> September 2015 when the matter was being certified urgent. The fact that it was not granted, or even addressed at the preliminary hearing, meant that it was spent.

7. The grant of prayer (b) in the terms expressed in the order extracted on 21<sup>st</sup> September 2015 meant that the substantive prayer had been granted in finality and the Motion had effectively been disposed of. The order was to subsist, not pending the hearing of the Motion of 15<sup>th</sup> September 2015, but of objection proceedings that are pending, not brought by the applicants herein, but by a person known as Bridgit Mutuku. The objection proceedings are founded on a revocation application dated 30<sup>th</sup> January 2012. The hearing of that application commenced on 1<sup>st</sup> July 2015 when the objector partially testified.

8. I reiterate that there is nothing pending in the Motion for me to determine. The order in force is that made on 16<sup>th</sup> September 2015, as extracted on 21<sup>st</sup> September 2015. The many issues raised by the applicants can only be addressed at the hearing of the pending objection proceedings, to which the applicants ought to join so that their voice can be heard. On the other hand, the objector should speed up the finalization of the matter by having it fixed for hearing so that her application can be disposed of.

**DATED, SIGNED and DELIVERED at NAIROBI this 25<sup>TH</sup> DAY OF NOVEMBER, 2016.**

**W. MUSYOKA**

**JUDGE**