



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
SUCCESSION CAUSE NO.206 OF 2008

In the Matter of the Estate of Mugiira Manene (Deceased)

SILVANA KAJUJUPETITIONER/APPLICANT

SILAS MBABU.....PETITIONER/APPLICANT

RULING

Removal of cautions

[1] The application dated 2nd December 2015 is asking this court:

1. To order the removal of all cautions, restrictions or inhibitions registered upon L.R No. Abogeta/U Kiungone/385; and

2. Make no order as to costs.

[2] The Application is expressed to be brought under Rule 73 of the Probate and Administration Rules and Section 47 of the Law of Succession Act; and is grounded on the Affidavit of Silvana Kajuju and other grounds set out in the application. The application is majorly premised inter alia on the grounds that; (1) the reasons for the registration of the caution has come to pass as suit NO. 29/1994 was concluded; and (2) the Petitioner is unable to execute the Grant or give the beneficiaries their share due to the presence of the restrictions and inhibitions on the estate property.

[3] The Applicant lamented that since 2011 when she and her co-administrator were issued with the Grant herein, they have not been able to distribute the only estate property namely L.R No. Abogeta/U Kiungone/385. She stated that when she recently visited the lands office in a bid to implement the Grant, she realized that there was an order of inhibition registered on 14th June 1994 in respect of CMCC NO 29 of 1994. As there is no pending objection, the beneficiaries are now up in arms against the joint Administrators to distribute the estate. Consequently, she urged the court to allow the application to enable them execute their mandate of distributing the estate in accordance with the Grant.

DETERMINATION

[4] It would appear that the application was not opposed. The record show that the court called for Meru CMCC NO 29 'B' of 1994 and Meru Civil Appeal No 119 of 2003 to enable it consider this application holistically. These files are now available and I have meticulously perused them. I note that suit number Meru CMCC NO. 29 'B' of 1994 was on 19th September 2003 dismissed with costs to the defendant. However, the Plaintiff preferred an appeal to the High Court namely Meru High Court Civil Appeal No. 119 of 2003. The said appeal was subsequently dismissed by the High Court pursuant to

Order XVI Rule 6 of the Civil Procedure Rules following unexplained inaction in the appeal for a period of three years.

[5] Now, therefore, upon careful consideration of the Application before me and the record of the High Court and lower court, I am able to discern that the orders of inhibition and caution in respect of the estate property herein had been issued by the lower court as a way of preserving the suit property in Meru CMCC NO 29 'B' of 1994. The suit was dismissed with costs and the subsequent Appeal to the High Court was also dismissed for want of prosecution. This recapitulation of facts of the case brings me to the conclusion that the orders of inhibition issued in those cases were accordingly blown away when the cases terminated as they did. Those orders fell by the way side and they have no legal foot on which to stand now. On the other hand, the Petitioners are holders of Grant of Representation of the estate of the deceased and they bear heavy statutory and equitable obligations and duties to implement the grant in the terms set out in the Grant and the law. But, because of these inhibitions upon the estate property, they are unable to carry out their said obligations; it is as if they hold impotent legal power. In the circumstances, therefore, it is only fair and just to remove these impediments from their path by allowing the instant application. This is one such case where justice should not only be done but be seen to be done; thus, I will exercise the jurisdiction in section 47 of the Law of Succession Act which provides that:

The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient:

Provided...

Accordingly, I allow the application dated 2nd December 2015 with no order as to costs. For avoidance of doubt, I order the immediate removal of all cautions, restrictions or inhibitions registered upon L.R No. Abogeta/U Kiungone/385. The administrators should now complete the administration of the estate without delay. It is so ordered.

Dated, signed and delivered in open court at Meru this 22nd day of November, 2016

F. GIKONYO

JUDGE

In the presence of:

Mutegi advocate holding brief for Ondari advocate for petitioner

F. GIKONYO

JUDGE