

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 2924 OF 1995

IN THE MATTER OF THE ESTATE OF M'IBUTU M'IMAITA (DECEASED)

RULING

1. The petitioner filed the summons dated 1st July 2014 asking that directions be given on the ruling and orders made on 14th May 2012 by Onyancha J. There is an alternative prayer that the court do grant judgment in terms of the typed proceedings regarding the ownership of Abothuguchi/Githongo/476.

2. A grant had been made in this matter to the petitioner but the same was revoked by Onyancha J. by the ruling dated 14th May 2012. The penultimate paragraph of the Ruling states:-

“For the above reasons and without going to the merit of the matter, it is the view of this court that the Grant of Letters of Administration issued by the court on 12th March 1996 and confirmed on 18th October 1996 must be and is hereby revoked. The cause shall return to the court where the petition was originally filed and be freshly heard after relevant amendments to include all survivors have been made and served by the petitioner. Furthermore, the survivors must all grant consent to the petitioner to file and prosecute the petition. In the meantime, the title to the suit land shall remain as it is presently until the cause is fully heard and finally determined. Costs shall await and be in the cause. Orders accordingly.”

3. My understanding is that the orders of 14th May 2012 set the parties back to square one literally. The petitioner was to amend the original petition, serve it on all the survivors and obtain their respective consents to prosecute the petition. Thereafter the petition was to be evaluated administratively by the Deputy Registrar before a decision was made either to grant the petition or not.

4. The parties came back to court on 23rd April 2013 and appeared before me. They informed the court that they had agreed by consent that the objectors would file a cross-petition within thirty (30) days. The matter was to be mentioned on 3rd June 2013 for directions. When the matter came up on 3rd June 2013, as appointed, directions were not taken for the parties indicated that they were consulting on appointment of administrators. The matter was fixed for mention on 23rd September 2013 for that purpose. On 23rd September 2013 the parties sought for more time. The matter was then fixed for mention on 16th October 2013. No agreement was reached on the issue of appointment of administrators, and the petitioner then filed the instant application.

5. I have perused the file of papers before me. I have confirmed that the objectors did on 17th May 2013 file pleadings in reply to the petition on record. The documents lodged in court on 17th May 2013 are an answer to the petition and a petition by way of cross-application for a grant, both dated 8th May 2013. There is also an affidavit in support of the petition by way of cross-application, sworn on 9th May 2013.

6. The effect of filing an answer and a cross-petition is to render an otherwise non-contentious process contentious. That is the effect of Section 69(2) of the Law of Succession Act, Cap 160, Laws of Kenya, which states that:-

“Where an answer and a cross-application have been filed under subsection (2) of Section 68, the court shall proceed to determine the dispute.”

7. The procedure to be followed after the filing of an answer to the petition and a cross-application is stated in Rule 17(b) of the Probate and Administration Rules. The matter is set down for directions on the disposal of the petition, answer and cross-applications. That is the procedure that the petitioner should have followed instead of filing the application dated 1st July 2014.

8. Consequently, I hereby direct the petitioner to obtain a date at the registry, to be given on priority, for directions on the disposal of the petition, answer and cross-application that are on record. Thereafter, the matter shall be disposed of in accordance with the directions to be given.

DATED, SIGNED and DELIVERED at NAIROBI this 25TH DAY OF SEPTEMBER, 2015.

W. MUSYOKA

JUDGE