



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NYAMIRA**

**ELC CASE NO. 28 OF 2021**

**{Formerly at Environment and Land Court at Kisii Case No. 228 of 2015}**

**JOSEPH OMBATI NYAMWEMBE**

**(Suing as administrator of estate of OIGORO NYAMIKE(deceased)...PLAINTIFF/APPLICANT**

**VERSUS**

**JOSEPH MOGENI NYANGWESO.....DEFENDANT/RESPONDENT**

**RULING**

This suit was commenced by a Plaintiff filed on 30/06/2015 same dated 29/06/2015 for the following orders: -

- (a) An order of cancellation of certificate of Title issued in the name of the Defendant Joseph Mogeni Nyangweso fraudulently.**
- (b) Costs of the suit and interest.**
- (c) Any further relief this Honourable Court may deem fit to grant.**

He sued in his capacity as the Administrator of the Estate of OIGORO NYAMIKE who died on 19/01/1985 having obtained letters of administration Ad litem from the High court Kisii in Succession Cause No. 240 of 2014 on 19/3/2015. The suit is defended vide statement of Defence dated 10/08/2015. The Defendant has raised a Preliminary Objection to the effect that on 08/02/2019 the Plaintiff was ordered to take out Succession proceedings in respect to the Estate of the deceased within 30 days from the aforesaid date in default of which the Grant ad Litem issued on 19/03/2015 would lapse or be deemed to have been revoked. The Plaintiff defaulted. On 08/02/2019 Justice D.S. Majanja made the following Ruling in the High court Kisii Succession Cause No. 240 of 2014: -

- (i) The Administrator ad litem shall take out citation proceedings for the Estate of the deceased (Oigoro Nyamike) and serve all the interested parties within 30 days.**
- (ii) Thereafter the grant herein shall lapse or shall be deemed to have been revoked.**

This order was given in court in the presence of Mr. Morigori for the Petitioner Joseph Ombati Nyamwembe and Mr. Soire for the Objector. I interpret the order to mean that as soon as the Administrator ad litem took out citation proceedings for the Estate of the deceased, Oigoro Nyamike, which was to be done within 30 days with effect from 08/02/2019, then the Grant would lapse or be deemed to have been revoked. The orders were framed in mandatory terms. We are not told whether the order was complied with or not. What if it was not complied with? The Objector ought to move the Succession court and have an order that since the orders were not complied with then the court should consider the Grant ad litem revoked.

I find myself in a situation that until and unless the Administrator ad litem has taken out citation proceedings for the Estate, the Grant ad litem issued remains in force. Although time limit was given, the same is yet to be revoked. If the order had been made in the following terms: -

- (i) If no citation proceedings are taken out within 30 days, the Grant shall stand revoked;**

I would find reason to strike out this suit. But now I understand the order to mean that until and unless the citation proceedings are taken out, the Grant stands. I would therefore hesitate to strike out this suit unless the Succession Court in Kisii declares the Grant ad litem revoked.

**RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 24TH DAY OF MARCH, 2022.**

**MUGO KAMAU**

**JUDGE**

**IN THE PRESENCE OF: -**

**COURT ASSISTANT: SIBOTA**

**PLAINTIFF: N/A**

**DEFENDANT: MR. SOIRE FOR THE DEFENDANT**