



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO. 664 OF 2008

IN THE MATTER OF THE ESTATE OF REHEMA BINTI MOHAMED ALIAS REHEMA MUMBI – (DECEASED)

SAUMU WANGUI WAMBUGU.....1ST APPLICANT

AHMED MUNYI MAKATA2ND APPLICANT

VERSUS

KHADIJA REHEMA MOHAMEDRESPONDENT

JUDGMENT

Sauma Wangui Wambugu, hereinafter referred to as the Applicant took out the summons for revocations of grant dated 7th October, 2010 in which she applied for the grant issued to **Khadija Rehema Mumbi**, the Respondent, revoked. She listed the following grounds in support of the summons:

- i. The grant was confirmed by means of untrue allegation that the applicants had been served with summons for confirmation when service was never made.**
- ii. The grant was confirmed by untrue allegation of a fact essential in point of law in that the deceased benign a Muslim and the court having appreciated the same previously the respondent concealed to the court that the deceased personal law was an issue and the reason the suppliants had filed objection.**

The summons is supported by the affidavit of Ahmed Munyi Makata and that of Saumu Wangui Wambugu Khadija. Rehema Mumbi filed a replying affidavit she swore to oppose the summons. When the summons came up for hearing it was directed that the same be determined by affidavit evidence and by written submissions.

I have considered the averments filed by both sides plus the written submissions. It is the submission of the Applicant that the summons for confirmation of grant was not served upon the Applicants and yet the Respondent was aware that the Applicants had filed an objection against the grant being given to the Respondent. The second issue taken up by the Applicant is to the effect that the Respondent concealed from court the fact that the distribution of the Estate should have been done in accordance with Muslim law. It is the argument of the Applicant that had that fact been disclosed the court would not have confirmed the grant. For the above reasons this court was urged to revoke the grant. The Respondent

acknowledged that the Applicants had filed an Objection to oppose issuance of a grant to the Applicant. The Respondent, however, contends that the objection was dismissed and no appeal was preferred despite a notice of appeal being filed. The Respondent further pointed out that there was sufficient evidence of service of the summons for confirmation of grant. The Respondent further argued that the administration of the Estate is complete.

After weighing the rival submissions, it is now clear in my mind that the application for revocation of grant is premised on two grounds. **First**, it is said that service was not effected upon the Applicants. I have perused the affidavit of service of Julius Kariuki Mundia sworn on 28th February, 2010 and it is apparent that the summons for confirmation of grant was served upon Saumu Wangui Wambugu. The same affidavit indicates that the Applicant received the summons also on behalf of one Ahmed Munyi Makata. There is no evidence to controvert the aforesaid affidavit. Even assuming that there was no proper service effected upon Ahmed Munyi Makata, there is no action taken by the Applicants to Protest against the summons for confirmation of grant. I am also convinced that the Applicant was served with a hearing notice as evidenced in the affidavit of service of Julius Kariuki Mundia sworn on 23rd March, 2010. The Applicant has not attempted to contest the contents of the affidavit of service. In my humble view, the first ground based on lack of service is found to be wanting hence it cannot support the summons. The second ground argued in support of the summons is that the distribution should have been done according to Muslim law. I think this issue was captured in the ruling delivered by **Lady Justice Kasango** on 30th April, 2009. In essence, the learned judge clearly stated that the High Court had unlimited jurisdiction to hear and determine the Succession dispute. The same issue cannot be raised again. There is evidence that the Applicant had filed a notice of Appeal to challenge the ruling of Lady Justice Kasango. In my view, the right forum to determine the issue is in the Court of Appeal. This court has already expressed itself hence it cannot go back to re-look at the issue.

I find no merit in the summons for revocation of grant dated 7th October, 2010. The same is dismissed with no order as to costs.

Dated, signed and delivered this 23rd day of August, 2013

J.K. SERGON

JUDGE

In open court in the presence of Kiminda for Applicant

Kingori holding brief for Wagiitha for Respondent