



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
SUCCESSION CAUSE 11 OF 2009

IN THE MATTER OF THE ESTATE OF DAVID JULIUS NTURIBI M'ITHINJI-DECEASED
CHASRITY KIMAMI NTURIBI.....PETITIONER

VERSUS

PAUL KITHINJI NTURIBI.....OBJECTOR

RULING

The application dated 10th July 2010 has been brought by the petitioner under Rule 49 of the P & A Rules. The applicant seeks:

1. That the ex parte orders issued to the intended objector in March 2011 be set aside.
2. That the order of inhibition waged in the land Register for L.R.NTIMA/IGOKI/6852 be lifted or removed.
3. The applicant also seeks costs of the application be met by the objector PAUL KITHINJI NTURIBI.

There is a supporting affidavit sworn by the petitioner of even date the gist of the affidavit is that he grant in this cause was confirmed and a certificate issued on 27th November 2007. It is contended that one of the beneficiaries of the estate of the deceased, Paul Kithinji Nturibi filed an application in which the petitioner was named a respondent. In that application the said applicant sought an order of inhibition over Land Parcel No. NTIMA/IGOKI/6852 a date for interparties hearing was set for 31st May 2010. However, upto the time this petitioner's application was, filed and subsequently set down for hearing the objector's application had not been served on the petitioner.

Mr. Riungu argued the applicant on behalf of the petitioner. He urged that having failed to serve the application, the objector has cost interest in his application and therefore the ex parte order granted to him should be set aside and if court pleased, the application on which it was based should be struck out altogether.

I have confirmed that the instant application was served upon the objector/Respondent's advocate, Gikunda Anampiu on 13th July 2012. The respondent did not file any repose and neither did the advocate appear at the hearing.

I also confirmed that the objector's application of 23rd March 2011 was never served upon the petitioner.

The respondent has had an inhibition order over one year without any attempt to serve the application on which it was obtained upon the petitioner. This is a classic case of abuse of the court process. It is clear the objector had no intention of pushing his application having failed serve it over one year down the line.

I have looked at he confirmed grant herein. I noted that the objector was provided equally alongside his brothers.

I have perused the court record and noted a ruling by Hon. Makau J. in which the same objector herein was found guilty of intermeddling with a deceased person's property under S45 (2) (a) of the Law of Succession Act and fined Kshs. 7000/=

It is clear to me that the objector has been found guilty of mishandling the estate of the deceased through intermeddling that same character is which informs his action in this application of obtaining an ex parte order and failing to serve the application and therefore ensuring the application is not heard.

I find application unchallenged. I find that the prayers sought in this application are merited.

I will allow the application in terms of orders 2 and 3:-

1. THAT this Honourable court be pleased to restrain the Respondent from interfering with the quiet occupation by the occupants of the property of the intestate of the deceased and allow the administration of the estate to proceed to finality.

2. COST of this application be borne by the respondent.

In addition I struck out the objector's application dated 23rd March, 2011.

The objector will meet the petitioner's costs for this application and the application struck out herein.

Those are my orders.

Dated, signed and delivered this 2nd day of August, 2012.

LESIT, J
JUDGE