



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
Succession Cause 186 of 2003
IN THE MATTER OF THE ESTATE OF M'MUGWIKA M'TURUCHIU ALIAS
MUGWIKA S/O TUARUCHIU (DECEASED)
JOHNSON MWOBOWIA M'IKIUGU.....PETITIONER
VERSUS
NTEERE M'MUGWIKAOBJECTOR

RULING

The deceased herein left a written will. The executors on seeking grant had that grant confirmed on 13th March 2009. That will to date has not been challenged nor has the confirmation of the grant been challenged in an appeal. An application was made by Nteere M'Mugwika, the objector herein dated 14th April 2009. In that application, he sought that the court would set aside the confirmation of the grant. That application was the subject of this court's ruling by Justice Emukule dated 3rd July 2009. The Judge in that ruling had this to say:-

“Considering all the above averments, and the fact that the deceased made a will which has not been challenged at all, it is difficult to understand the objector's driving force or motive..... One aspect is clear in my mind in the absence of any challenge to the will and any grounds therefore, any orders made in this matter under Rule 73 of the Probate and Administration Rules, would neither be in the interest of justice nor for the prevention of the abuse of the process of court.”

The objector to date has not challenged that ruling. The administrator has now brought before court a Notice of Motion dated 5th August 2009. It is sought by that application that the court to be pleased to remove cautions and inhibitions registered against L.R. Number *Abothuguchi/Githongo/168*. The application is brought under Rules 63 and 73 of the Probate and Administration Rules. In support of that application, it is deposed that the said caution and inhibition were registered by the objector and another person called M'Ringera M'Turuchiu. The deponent in support of that application stated that the only thing remaining to conclude this succession is the distribution of that land which is now prevented by the

caution and inhibition. That application was opposed by the objector. The objector deponed in his replying affidavit that the Diocese of Meru had purchased for him a plot in Isiolo but had failed to construct a structure for him. It is on that basis that he seeks to oppose the application before court. It should be noted that the objector raised the very same ground in his rejected application which was the subject of the ruling of 3rd July 2009. The Judge in his ruling in response to that argument stated thus:-

“The essence of the objector’s case is that outside the cause in court, the Diocese Meru registered trustees, had offered to buy him a plot in Isiolo town and to have it constructed, that the plot had been bought but no building had been erected or built on it.”

That argument by the objector was rejected in that ruling. Since that ruling has not been appealed against, the objector cannot once again raise the same argument in opposition to the present application. I find that the Notice of Motion dated 5th August 2009 is merited and I grant the following orders:-

1. *I order the land registrar to remove the cautions and inhibitions registered by M’Ringera M’Turuchili and Nteere Mugwika against L.R. No. Abothuguchi/Githongo/168.*
2. *There shall be no orders as to costs.*

Dated and delivered at Meru 28th day of May 2010.

MARY KASANGO
JUDGE