

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
Probate & Administration 202 of 2004

IN THE MATTER OF THE ESTATE OF GRACE CHEPKORIR KOROS - (DECEASED)
RULING

Before the court is a summons taken out pursuant to the provisions of Section 47 and 97 of the succession Act cap. 160 of the Laws of Kenya and Rule 73 of the Probate and Administration Rules made under the said Act. It seeks an order for stay of execution of the Ruling delivered herein revoking the Grant of Letters of Administration issued to the Petitioners herein pending the hearing of the appeal. It is grounded on the basis that the objectors were the cause of the delay in not confirming the Grant and that execution of the orders pursuant to the ruling would result in intermeddling of the deceased's estate and that the Applicants are ready to abide by whatever conditions of stay the court would give. The 2nd Petitioner swore the supporting affidavit stating that the objectors frustrated the confirmation of the Grant and that the court has a wide discretion to grant the orders sought, among other things.

Grounds of opposition filed are that the application is vexatious and frivolous and an abuse of the process of the court and allegations of misappropriation of the deceased's estate were sensational and speculative, that the application does not satisfy the pre-requisites for the grant of the orders sought.

It was submitted for the Applicant that the appeal filed has high chances of success and the Applicants are willing to abide by whatever conditions the court may give. For the objectors it was submitted that there was no order attached to the application and in any event the Ruling was not capable of execution that could be stayed.

I have considered the application. The Ruling of the court dated and delivered on 16th December 2009 revoked the Grant of representation issued to the applicants and ordered that the parties herein agree on some two persons whose names would be presented to court for appointment as administrators of the estate of the deceased herein alongside her child who has since attained the age of majority. What is in that Ruling is capable of execution? The Grant was revoked and until reinstated it remains revoked. The parties have not complied with the order for appointment of two possible administrators. I find that there was no order annexed to the application capable of execution that I should order stayed. No basis is shown upon which the application could succeed. The same is not a review application and this court cannot sit on appeal of its own order for revocation of Grant. This application is without merit and it is for dismissal and it is accordingly so dismissed with costs.

DATED SIGNED AND DELIVERED AT ELDORET THIS 16TH DAY OF JUNE 2010.

P.M.MWILU
JUDGE
IN THE PRESENCE OF

Omwenga - Advocate for Applicants
Gicheru - Advocate for Respondent
Andrew Omwenga - Court clerk
P.M.MWILU
JUDGE