



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 197 OF 1997

**IN THE MATTER OF THE ESTATE OF M'TWERANDU
M'IRUNGU.....DECEASED.**

RUKARIA

**M'TWERANDU.....PETITI
ONER**

V E R S U S

DR. LEONARD KIMEU

MWANTHI.....OBJECTOR.

R U L I N G

The application is the Summons dated 16th August 2010. It has been brought under s.47 of the Law of Succession Act and Rules 46 and 73 of Probate and Administration Rules. It seeks one order thus:-

(1) That the inhibition orders issued on 7th December 1998 and registered on LR. No. Ntima/Igoki/3183 on 14/12/1998 and caution registered on 2/7/2002 be vacated and/or discharged to enable the estate to be distributed as per certificate of grant dated 12.06.1998.

The application is premised on five grounds on the face of the application which stipulate as follows:

(a) The respondent/objector had lodged an application for revocation dated 6/7/1998 but which was dismissed on 4/7/2002.

(b) The respondent/objector was granted orders of inhibitions on 7/12/1998 and which were registered against the subject land on 14.12.1998.

(c) The ruling dated 4.7.2002 which dismissed the objector's application for revocation confirmed the orders of inhibitions until the objector brings a proper claim against the estate.

(d) The objector in obedience to the ruling dated 4.7.2002 did file Meru CMCC No. 119/03 against the petitioner/applicant claiming some land from him but the suit was dismissed on 29.7.2010.

(e) There is nothing now pending in favour of objector and the court should now discharge the inhibition orders to allow the estate to be distributed to the dependants as per grant.

The application is supported by the affidavit of M'RUKARIA M'TWERANDU. I have considered the contents of the affidavit. The essence of the affidavit is that there is a confirmed grant in the instant cause which is yet to be implemented due to various objections and other suits by the objector/respondent. It is deposed that all the suits and objections by the objector have been determined in favour of the petitioner.

The application is opposed by way of Notice of Preliminary Objection dated 25th October 2010. The objection filed by advocate to the objector raises one point of law in the following terms:

1. That the Succession Cause herein is bad in law and therefore incompetent as the grant herein was issued by an ampire that lacked jurisdiction.

Mr. Kiambi for the Petitioner urged the application and asked the court to find that there was nothing more preventing the order of inhibition given by Hon. Kasanga Mulwa Judge on 6th July 1998 since the suit filed by the Objector has been finalized.

In regard to theMr. Kiambi conceded that the letters of Administration of the Grant and the confirmed grant were all issued by Mr. Oundu, a Resident Magistrate who had no jurisdiction to issue same. Counsel urged that magistrate had limited jurisdiction under S47 of Law of Succession Act. Mr. Kiambi urged the court to countenance the lack of jurisdiction of the magistrate due to shortage of judges and find that no prejudice will be suffered. Mr. Kiambi also urged the court to note that the issue of lack of Jurisdiction was being rather late in the day.

Mr. Mwanzia urged the application on behalf of the Objector, Mr. Mwanzia submitted, that since the initial grant and the confirmed grant were issued by Mr. Oundu, a magistrate, the action was clearly in contravention of s. 48 of the Law of Succession Act which gave the High Court exclusive jurisdiction to issue grants and determine matters of Succession. Counsel urged that s.49 of the Act which game magistrate jurisdiction in areas where there is no High Court did not apply. Counsel urged that the proceedings were a nullity. Mr. Mwanzia urged the court to follow the High Court decision in Succ Cause No. 246/95 where in similar circumstances the court set aside a grant.

Mr. Kiambi in reply urged that the cited case was distinguishable because it was made in an application for revocation of grant. Counsel urged that since 1998 the objector had not applied for revocation of the grant.

I have carefully considered the application dated 16th august 2010 and the Preliminary Objection dated 25th October 2010

Dated Signed and delivered at Meru this 19th day of November 2010

LESIIT, J

JUDGE

In the presence of the parties

Kirimi – Court Clerk.

Joan Ndorongo Advocate for Applicant/Petitioner.

Mr. Mwanzia advocate for Respondent/Objector

LESITT, J`

JUDGE