



REPUBLIC OF KENYA



**KENYA LAW**  
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**Rupia v Wanzala & another (Civil Appeal 15 of 2020)  
[2024] KEHC 3826 (KLR) (19 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 3826 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
CIVIL APPEAL 15 OF 2020**

**WM MUSYOKA, J  
APRIL 19, 2024**

**BETWEEN**

**AGGREY OKUMU RUPIA ..... APPELLANT**

**AND**

**ALICE AYIETA WANZALA ..... 1<sup>ST</sup> RESPONDENT**

**ROSEMARY NEKESA WANZALA ..... 2<sup>ND</sup> RESPONDENT**

*(An appeal arising from orders made in the ruling of Hon. Mrs. Lucy Ambasi,  
Chief Magistrate, CM, in Busia CM CSC No. 314 of 2016, of 2nd July 2020)*

**JUDGMENT**

1. The appeal herein arises from a decision of the trial court, in Busia CM CSC No. 314 of 2016, allegedly delivered on 2<sup>nd</sup> July 2020. The grounds of appeal revolve around the trial court dismissing the appellant's application without justification; the trial court allowing illegalities by the said dismissal; and leaving 2 sets of confirmation orders, in respect of the same grant, to subsist, by dismissing the said application. The appellant would like the said decision set aside, and substituted with orders that would meet the ends of justice.
2. The appeal herein is in respect of orders made in a ruling that was allegedly delivered on 2<sup>nd</sup> July 2020. "Allegedly" because there are issues with relation to that. The handwritten record has an order, made on 2<sup>nd</sup> July 2020, dismissing an application, filed on 30<sup>th</sup> June 2020, with no orders as to costs. After that handwritten order there is a typed ruling, purported to have been dated signed and delivered on 3<sup>rd</sup> July 2020, dismissing an application dated 29<sup>th</sup> January 2020, with an order that each party bear their own costs. That creates some uncertainty as to what is exactly being challenged in this appeal, between the ruling that was delivered on 2<sup>nd</sup> July 2020, and that purportedly delivered on 3<sup>rd</sup> July 2020. The 2 rulings, on the face of it, appear to be on different applications.



3. For avoidance of doubt, the order in the hand of the trial court is as follows:

“Ruling delivered and the N/M filed on 30<sup>th</sup> June 2020 dismissed with no orders as to costs.”

The disposition clause in the typed ruling, dated signed and delivered, purportedly, on 3<sup>rd</sup> July 2020, reads:

“The court holds and finds that the Notice of Motion dated 29<sup>th</sup> January 2020 lacks merit and the same is hereby dismissed. This being a family matter, each party shall bear their own costs.”

4. I have not traced, in the trial record, any application filed on 30<sup>th</sup> June 2020, but I note that the application, dated 29<sup>th</sup> January 2020 was filed on 30<sup>th</sup> January 2020. According to the handwritten notes, there were no proceedings on 3<sup>rd</sup> July 2020. I note, from the record of appeal, that the appellant has exhibited only the application dated 29<sup>th</sup> January 2020, filed in that cause on 30<sup>th</sup> January 2020, which is the subject of the ruling purportedly signed dated and delivered on 3<sup>rd</sup> July 2020. The application allegedly filed on 30<sup>th</sup> June 2020, which is the subject of the ruling delivered on 2<sup>nd</sup> July 2020, is not included in the record of appeal, and I suppose that is so as the said application does not exist, and the record of the proceedings conducted on 2<sup>nd</sup> July 2020 erroneous. I shall proceed on the basis that the ruling purportedly dated signed and delivered on 3<sup>rd</sup> July 2020, was in fact delivered on 2<sup>nd</sup> July 2020, and the reference to 30<sup>th</sup> June 2020, in the handwritten order of 2<sup>nd</sup> July 2020, was meant to be 30<sup>th</sup> January 2020.
5. The application, dated 29<sup>th</sup> January 2020, sought that an order made on 23<sup>rd</sup> January 2020, allowing an application, dated 6<sup>th</sup> November 2019, be set aside, principally on grounds that the application, dated 6<sup>th</sup> November 2019, had not been served. According to the appellant, who was the applicant, in that application, he had not been served with the application, dated 6<sup>th</sup> January 2019. He had had a chance meeting with the 1<sup>st</sup> respondent, who mentioned that that cause was coming up on 23<sup>rd</sup> January 2020. He informed his Advocates, who confirmed that they had been notified of the court appointment scheduled for 23<sup>rd</sup> January 2020, but had not been informed of what it was about. He was advised, by his Advocates, to attend court on 23<sup>rd</sup> January 2020, which he did. The matter proceeded. When he consulted his Advocates, thereafter, he was advised that, if the application was allowed, there would be an error, as the land sought to be distributed was ancestral, and did not belong exclusively to the deceased person, the subject of the cause. Secondly, the grant had already been confirmed, and there could not be 2 confirmations of the same grant. Thirdly, that the beneficiaries had not consented, and some signatures of those allegedly consenting were forgeries. He suggested that the only surviving co-owner of the estate land, Josiah Okello Rupiah, should be the right person to distribute the property amongst the families of the other co-owners. There was an affidavit by the married daughters of the deceased, renouncing any claim to the estate land.
6. There was a reply to the application, by the 1<sup>st</sup> respondent, vide an affidavit that she swore on 24<sup>th</sup> February 2020. She averred that the Advocates for the appellant had been served with a hearing notice for 23<sup>rd</sup> January 2020, but they chose not to attend court, and the grant was confirmed, after the court was satisfied as to service. She affirmed that the land in question was ancestral, co-owned by siblings, but stated that the deceased was entitled to only a third of it, and that that was what the court distributed. She stated that there was no alternative proposal, by the appellant, on distribution.
7. The application, dated 29<sup>th</sup> January 2020, was canvassed by way of written submissions. In the ruling, dated 3<sup>rd</sup> July 2020, the court found and held that the appellant had been served with the application,



and that was explained by his presence in court. On the grant having been confirmed earlier, on 22<sup>nd</sup> November 2018, it was held that confirmation of grant could only be done within 6 months, and a grant could not be confirmed without the court minuting the reasons for doing so before the 6 months had expired, and confirmation could not happen without the parties being heard. The court then proceeded to confirm the grant.

8. Directions were given, on 29<sup>th</sup> January 2024, for canvassing of the appeal by way of written submissions. Only the respondents filed written submissions. The said written submissions give a historical background to the matter. Of significance is the fact that the grant had initially been sought by the respondents, but the appellant objected, and it was made to the 3 of them, that is the appellant and the 2 respondents. The appellant applied for confirmation of their grant, and orders to that effect were made by the court on 22<sup>nd</sup> November 2018. The confirmation orders of 22<sup>nd</sup> November 2018 were reviewed and set aside, on 11<sup>th</sup> October 2019, with directions that a fresh application for confirmation of grant be filed, and that order gave rise to the application, dated 6<sup>th</sup> November 2019, and the orders of 23<sup>rd</sup> January 2020.
9. Only 2 issues arise for determination: whether there was service of notice, with respect to the hearing scheduled for 23<sup>rd</sup> January 2020; and whether there were 2 certificates of confirmation of grant in force at the same time.
10. On the matter of service, it should be clear that the appellant conceded, in his affidavit, before the trial court, that he got to learn that the matter was coming up in court on 23<sup>rd</sup> January 2020, and he, in fact, attended court on the due date. Secondly, when he learnt of that date, he contacted his Advocates, who confirmed to him, that they had been served with a notice of the hearing, and encouraged him to attend court on the due date. So, there was service of a notice of the hearing date on the Advocates for the appellant, but those Advocates chose to stay away. The appellant was himself in court, as he was aware of the hearing date, after getting that information from the 1<sup>st</sup> respondent, and from his Advocates. There is an affidavit of service, in the trial record, sworn on 13<sup>th</sup> January 2020, by one of the Advocates for the respondents, attaching a hearing notice for 13<sup>th</sup> January 2020, showing that the Advocates for the appellant were served on 19<sup>th</sup> January 2020, and they embossed their stamp on the notice, and signed it in acknowledgement. It cannot, then, be said that the appellant, and his legal advisers, had no notice of what was to happen on 23<sup>rd</sup> January 2020.
11. On the matter of 2 certificates of confirmation of grant being in force at the same time, it is true and correct that the grant in that cause was confirmed twice. It was confirmed first on 22<sup>nd</sup> November 2018, by Hon. WK Chepseba, Chief Magistrate, and a certificate of confirmation of grant was duly issued, of even date. The second confirmation was done on 23<sup>rd</sup> January 2020, by Hon. Ambasi, CM, and a certificate of confirmation of grant was issued, bearing an even date. Was the second confirmation illegal, on account of subsistence of the earlier confirmation orders? No, it was not. The trial record bears an application, dated 12<sup>th</sup> March 2019, by the 1<sup>st</sup> respondent, where she sought review and setting aside of the confirmation orders made on 22<sup>nd</sup> November 2018, for reasons detailed in that application. There is, in the trial record, a ruling that Hon. Ambasi, CM, delivered on 11<sup>th</sup> October 2019, cancelling the earlier confirmation, and directing that a fresh confirmation application and proposals on distribution be filed. So, at the time the orders of 23<sup>rd</sup> January 2020 were being made, those made earlier, on 22<sup>nd</sup> November 2018, had been vacated, and did not exist, hence the issue of 2 concurrent confirmation orders and certificates did not arise.
12. In view of the above, I find no merit in the appeal herein, and I consequently dismiss the same, with no orders as to costs. It is so ordered.



**DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA THIS 19<sup>TH</sup> DAY OF APRIL  
2024**

**WM MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

**Advocates**

Mr. Ouma, instructed by BM Ouma & Company, Advocates for the appellant.

Mr. Egesa, instructed by Bogonko Otanga & Company, Advocates for the respondent.

