



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of Alubertito Obonyo Ochili (Deceased) (Succession Cause 68 of 2008) [2023] KEHC 19033 (KLR) (19 June 2023) (Ruling)

Neutral citation: [2023] KEHC 19033 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
SUCCESSION CAUSE 68 OF 2008**

WM MUSYOKA, J

JUNE 19, 2023

**IN THE MATTER OF THE ESTATE OF ALUBERTITO OBONYO OCHILI
(DECEASED)**

RULING

1. I am tasked with determining a summons for revocation of grant, dated January 3, 2023. It is brought at the instance of Andrew Kiszy Webuye, who I shall refer hereto as the applicant. He avers to hold a valid decree made in Busia ELC No 178 of 2020, for 2½ acres out of estate land, the same having been sold to him by the deceased. He accuses the administrator, Ernest Bonventure Okello, who I shall refer to hereafter as administrator, of selling off portions of the land to defeat the decree. He would like to have the grant revoked, or the confirmation orders tinkered with to accommodate the award in the decree in Busia ELC No 178 of 2020. Although his affidavit purports to carry annexures, none were filed in court.
2. The administrator swore an affidavit in reply, on February 28, 2023. He concedes that the applicant has a judgment in his favour from Busia ELC No 178 of 2020, but he asserts that he was dissatisfied with that judgment, and lodged an appeal at the Court of Appeal, being Kisumu CACA No E283 of 2022. He also avers that there are stay orders made in his favour, in a ruling delivered on February 14, 2023. He states that the interests of the applicant are safeguarded by the decree in Busia ELC No 178 of 2020. He avers that the instant application is a backdoor effort to defeat the stay order of February 14, 2023.
3. The administrator has attached a copy of the ruling of February 14, 2023. It was made in Busia ELC No 178 of 2020, and it stays execution of the judgment in Busia ELC No 178 of 2020, pending the hearing and determination of the appeal in Kisumu CACA No E283 of 2022. The terms of the stay order of February 14, 2023 are as follows:
 - “ 1) An order is issued staying the execution of the judgment dated November 10, 2022 and the subsequent decree pending the hearing and determination of the appeal.



- 2) The defendants shall deposit the original title to the land parcel No Samia/Bukhangala/"A"/280 with the Deputy Registrar of this Court together with duly executed transfer documents for the transfer of 2½ acres out of the said land in favour of the plaintiff within 30 days from today.
- 3) The above documents shall remain in the safe custody of the Deputy Registrar until the appeal is heard and determined or until further orders of this Court.
- 4) In default of (2) above, the stay order shall lapse automatically and the plaintiff shall be at liberty to execute the Decree herein..."

4. I agree with the administrator, the interests of the applicant are secured by the judgment in Busia ELC No 178 of 2020, and more so by the orders that Olao J made on February 14, 2023. The said orders, of February 14, 2023, mean that the decree in Busia ELC No 178 of 2020 is self-executing. The applicant does not need to move the probate court in this cause, to give effect to the decree in Busia ELC No 178 of 2020, in view of the orders of 14th February 2023. The Deputy Registrar is holding duly executed transfer forms, which the applicant will be at liberty to register should the Court of Appeal find in his favour.
5. I agree too with the administrator, that the applicant is in a hurry to execute the decree in Busia ELC No 178 of 2020, through the succession cause herein, yet the court in Busia ELC No 178 of 2020 has given directions, in the ruling of February 14, 2023, on how that decree is to be executed. I also agree, that the applicant is attempting, through the instant application, to defeat the stay orders of February 14, 2023, by pushing to have the confirmation orders tinkered with before the appeal in Kisumu CACA No E283 of 2022 has been heard and determined.
6. The administrator has not declined to heed to the decree in Busia ELC No 178 of 2020, because there is a pending appeal, and the decree has been stayed. No action can be taken to execute the said decree without regard to the orders of February 14, 2023. There is, therefore, no justifiable cause to remove the administrator from office as such, and there is no need to vary or revisit the confirmation orders herein, to align them to the decree in Busia ELC No 178 of 2020, in view of the stay orders of February 14, 2023.
7. There is no merit at all in the application, dated January 3, 2023. It is for dismissal, and I hereby dismiss it. It is brought mischievously, in an effort to defeat subsisting court orders. It is for such that costs should be slapped on the applicant. I shall, accordingly, order that the respondent shall have the costs of the application.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA ON THIS 19TH DAY OF JUNE 2023

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Appearances

Andrew Webuye, the applicant, in person.

Mr. Juma, instructed by JV Juma & Company, Advocates for the administrator.

