



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Richard Churko Stephen alias Richard Churko Guyo (Deceased)
(Succession Cause 8 of 2018) [2023] KEHC 20072 (KLR) (7 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20072 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MARSABIT
SUCCESSION CAUSE 8 OF 2018**

JN NJAGI, J

JULY 7, 2023

BETWEEN

GRACE WAMBUI NGUGI 1ST OBJECTOR

NANCY SHALLO CHURKO 2ND OBJECTOR

COLLINS GUYO STEPHEN 3RD OBJECTOR

AND

FATUMA GALGALO GUYO PETITIONER

AND

ZACHARIA GUYO GUMI INTERESTED PARTY

RULING

1. The petitioner/defendant has filed an application dated November 9, 2022 seeking for orders that this court stays the execution and reviews its judgment dated November 3, 2022 until hearing and determination of an intended appeal. The application is premised on the ground that the court in its judgment of November 3, 2022 remarked that the petitioner herein never challenged the application for confirmation of grant dated January 27, 2020 yet the petitioner had filed a replying affidavit on March 6, 2020 which should have been in the court file unless willfully ignored. Further that the court's judgment delivered on September 24, 2019 is subject of Court of Appeal No 311/2019 hence any advance orders made herein will render the said appeal nugatory. More so that there is no grant made or dated September 24, 2019 to be confirmed and as such the judgment dated November 3, 2022 is not founded on any law.
2. The application was opposed by objectors *vide* the replying affidavit of the 1st objector, Grace Wambui Ngugi, on the ground that there is no new evidence discovered by the petitioner which was not within her reach to warrant this court to review its judgment of November 3, 2022. That this court was



mandated to pronounce itself on the issue of confirmation of grant issued by Justice Chitembwe on the September 24, 2019. Further that it is premature for the petitioner to seek for stay of execution as this court has yet to pronounce itself on the issue of confirmation and as such there is nothing that the objectors can execute.

3. The application was canvassed by way of written submissions by the advocates for the parties which I have considered.
4. The petitioner is seeking for review of this court's judgment delivered on November 3, 2022 on the ground that the court did not consider her grounds of objection as contained in her replying affidavit sworn on March 4, 2020 and filed in court on March 6, 2020. The petitioner in the instant application has attached a photocopy of the said replying affidavit.
5. In my judgment delivered on November 3, 2022 I stated as follows;
 11. The petitioner did not oppose the summons for confirmation of grant dated January 27, 2020.
6. I have perused the court file and I have noted that there is indeed an affidavit by the petitioner sworn on March 4, 2020 in which she was opposing the mode of distribution that was being proposed by the objectors in the summons for confirmation of grant dated January 27, 2020. I may not know now whether I failed to notice the petitioner's affidavit when I was writing the judgment.
7. I have considered the contents of the petitioner's affidavit in respect to the objectors' summons for confirmation of grant dated January 27, 2020. The petitioner in the said affidavit opposed the mode of distribution of the estate as proposed by the objectors on the grounds, *inter alia*, that: Some of the assets of the estate had not been properly identified. If the assets of the estate were sold her children would be rendered destitute. The beneficiaries of the estate had first to be established before confirmation of grant was done hence the appeal had to be determined first before distribution of the estate was done. The application for confirmation was premature and an abuse of the process of the court.
8. I have considered these issues. I do not think that the issues raised in the affidavit are weighty enough as to warrant the court to review its judgment of November 3, 2022. In the first place, Justice Chitembwe had in his judgment identified the assets of the estate and the beneficiaries. This court in its judgment did not include any other assets or other beneficiaries other than what was ordered by Justice Chitembwe in his judgment.
9. The argument that the petitioner's children would be rendered destitute if an order for sale of the estate was made was not true as her children were beneficiaries to the estate and they were therefore bound to benefit from any order of sale of the estate.
10. On the issue that confirmation of grant had to await determination of the appeal that the petitioner had filed was not the correct position in the matter as Justice Chitembwe had ordered the estate to be distributed after parties had filed their respective valuation reports. The objectors filed their valuation reports after which they filed summons for confirmation of grant. It was therefore not true that the application for confirmation of grant was premature. This court was implementing Justice Chitembwe's orders when it proceeded to hear the application for summons for confirmation of grant.
11. Some of the other issues raised in the affidavit of March 4, 2020 were matters that would properly be raised in the appeal and not in summons for confirmation of grant as filed by the objectors.
12. As to orders for stay of execution, it is common ground that there is an appeal pending at the Court of Appeal. The petitioner sought for stay of execution with the said court and the same was rejected. This court cannot revisit a matter that is in the hands of the Court of Appeal. However, this court is yet to



make final orders in regard to confirmation of grant. There is no basis for an order of stay of execution of this court's judgment of November 3, 2022.

13. In view of the foregoing, it is my finding that the affidavit of March 4, 2020 did not raise any issue that would warrant the court to review its judgment of November 3, 2022. In the premises the application dated November 9, 2022 is lacking in merit and is dismissed with costs to the objectors.

DELIVERED, DATED AND SIGNED AT MARSABIT THIS 7TH JULY 2023

J. N. NJAGI

JUDGE

In the presence of:

Mr. Kinyanjui for Objectors

N/A for Petitioner/Defendant

Mr. Hussein Sode – interested party present

Court Assistant – Jarso

30 days R/A.

