



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE 654 OF 2009

IN THE MATTER OF THE ESTATE CHRISTOPHER NATANIEL WAUDO SIGANGA (DECEASED)

B E T W E E N:

EMMY NAWANJAYA SIGANGAAPPLICANT

VERSUS

ELIUD LUSINDE SIGANGA.....1ST RESPONDENT

DAVE LUNG' AHO SIGANGA.....2ND RESPONDENT

R U L I N G

1. The Court has before it an Application brought by Summons dated 22nd May 2018. The Application is brought under **Section 47 of the Succession Act Cap 160 Laws of Kenya, Rules 49, 59(1) (6), 63 and 73 of the Probate and Administration Rules and Section 27(b) and 28 of the Contempt of Court Act No. 46 of 2018**. The Application seeks the following Orders:

“THAT the Honourable Court does direct and or order that the 2nd Objector, DAVE LUNG' AHO SIGANGA be fined two hundred thousand shillings and/or be imprisoned for a term not exceeding six months, for being in contempt of court in respect to the court order of the Honourable Court given and issued on 12th October 2017, herein.”.

2. The Application is premised on an earlier application which was brought under a Certificate of Urgency signed by Advocate Andrew Kutto. The nature of the urgency was explained thus:

“1. That the succession cause is due for mention for direction on 22nd May 2017 regarding the expeditious hearing of the Application for Confirmation of Grant herein.

2. That the properties Motor Vehicle Registration No. KAL 882D, TOYOTA HILUS AND PLOT NO. NAVAKHOLO MARKET are duly owned and/or registered in the Petitioner/Applicant's name and do not in any way form part of the deceased estate

And therefore unless this Honourable Court hears the instant application urgently and remove the said properties from the Schedule of Assets the same may be subjected to distribution herein and the detriment of the Petitioner/Applicant.”

3. In the earlier application, the Applicant seeks the following Orders:

“1. THAT this application be certified urgent and service thereof in the first instance be dispensed with.

2. THAT the Honourable Court be pleased to remove the properties known as Motor Vehicle Registration No KAL 882D, TOYOTA HILUS AND PLOT NO. NAVAKHOLO MARKET from the Schedule of Assets herein.

3. THAT this Honourable Court be pleased to order and compel the 2nd Objector, DAVE LUNGAHO SIANGA to Surrender the Motor Vehicle Registration No. KAL 882D TOYOTA HILUX to the Petitioner/Applicant EMMY NAWANJAYA SIGANGA who is the duly registered owner

4. THAT costs be in the Cause

She asserted that the Property in question belonged to her – she was the registered owner and that the properties were not owned by the

Deceased prior to his death and therefore the Court lacked jurisdiction to deal with that property when it came to the confirmation of grant and consequent distribution. In her Supporting Affidavit at paragraph 3 the Applicant stated that when she filed her petition (as sole beneficiary) she listed certain properties as belonging to the Deceased. In particular the Motor Vehicle Toyota Hilux Reg No. KAL 882D and Plot No Navakholo Market. She said that she did so in error because she was representing herself. She has now come to the realization that the Property and Car actually belong to her and in relation to Plot No. Navokholo Market she has divested herself of the Property. That realization is explained at paragraph 12 of the Supporting Affidavit where she says: "That I am advised by my advocates on record, which advise I verily believe to be true, that given the fact that the said properties listed in the Schedule of Assets do not in any way form part of the deceased's estate, this Honourable Court lack jurisdiction to deliberate on them and or distribute the same.

4. Hon Justice Njagi heard the Application and delivered his Ruling on 12th October 2017. The Ruling recorded that the Applicant herself had filed a Letter from the County Clerk Kakamega dated 14th April 2008 in which it was confirmed that "Plot No. 4 on Navakholo Market belongs to the Mr Nathaniel Siganga and he has all the rights to carry out any business on the plot...". It is also recorded that the petition was filed in 2009. In relation to the Motor Vehicle the Trial Court decided that the motor vehicle Reg. No. KAL 882D Toyota Hilux was erroneously listed as part of the estate. The Hon Judge then ordered the vehicle be released to the vehicle to the Applicant by the Joint Administrator Respondents.

5. The Respondent Filed an application under certificate of urgency dated 9th November 2017. The Applicant sought the setting aside of the Judgment of the Court and restoration of the Motor Vehicle to the Estate. It seems that Application was never heard.

6. Nevertheless the Applicant filed an Application seeking the committal for contempt of the Co-Administrator for failing to deliver that asset to her. However the Order is clear. The Vehicle was to be removed from the Schedule of Assets. In addition, the Respondent is arguing that he was not served with the Order.

7. The Current Application was canvassed by Affidavit evidence and the Parties filed their written submissions as directed. The evidence and arguments have been considered carefully and taken into consideration in reaching this Court's decision. However, it is worth noting the attitude taken by the Applicant. In her Written Submissions it is said that "The Respondent has stated further that he did file the application dated 9th November 2017 that sought to set aside the court orders that are now in question. The Respondent filed the said application and went into slumber and the same became indolent and it is therefore our humble submission that the said application has been overtaken by events since the Respondent is now facing contempt of court charges in the instant application for disobeying the court orders. We humble submit that the Respondents application is inconsequential and the same has been overtaken by events."

8. This Court does not share those views. The Applicant obtained an order relating to the Estate. It appears as if the Order was obtained ex parte. The Ruling refers to an opportunity to respond on a single date. The Respondent states that he was not served and in any event there was no order relating to the Plot nor was there any order for delivery of the motor vehicle. It is therefore clear that the Applicant does not come to Court with clean hands.

9. When the matter came before the Court as currently constituted, the Court ordered an assessment/valuation of the Motor Vehicle. It states that the vehicle disassembled hence not physically assessed. The report does not record the whereabouts of the vehicle and whether it is in the custody and/or control of the Second Respondent.

10. For the reasons set out above the Application does not cross the threshold where this Court would direct the Second Respondent to show cause why he should not be committed for contempt. The Applicant has failed to demonstrate any willful disobedience of a court order. The Application is hereby dismissed with costs payable to the Respondent on an indemnity basis.

11. The Parties have been appointed Joint Administrators of the Estate. In furtherance of the objective of that appointment it is advisable that they complete the identification and collection of the Estate and apply for confirmation of the grant without further delay.

Order accordingly,

Farah S. M. Amin

JUDGE

Delivered electronically signed and dated at Kakamega this the 8th day of February 2021

In the presence of:

Court Assistant: Fred Owegi

MR Mulama holding brief for Mr Abok

Ms Eroba holding brief for Messrs Kutto Kaira with her clients