



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

SUCCESSION CAUSE NO. 9 OF 2005

IN THE MATTER OF THE ESTATE OF THE LATE EZEKIEL WATAKILA MUKHONGO

AGGREY WABWILE NAKHISA.....OBJECTOR/ APPLICANT

VERSUS

AINEA WEKESA WATAKILA.....1ST RESPONDENT

ROBAI KHAMALA NAKHISA.....2ND RESPONDENT

RULING

Vide Chamber Summons dated 25th January, 2017, the applicant seeks orders that;

1. Pending the hearing and determination of this application inter parties on a date to be set by the court, status quo obtaining on all the properties of the deceased as at 25th January, 2017 be maintained.
2. The orders of 11th November, 2015 dismissing the applicant's application dated the 18th February, 2015 be and is hereby varied and or set aside with an order reinstating the same for hearing at a date fixed by court.
3. That the orders in (2) above do operate as stay of implementation of the certificate of confirmation of grant pending the determination of the application dated 18th February, 2015.
4. Costs of this application be provided for.

The grounds in support of the summons are contained therein and the applicants affidavit of an even date where the applicant depones that he is a grandson to the deceased Ezekiel Watakila Mukhongo.

The applicant depones that he had instructed the firm of Sifuna & Sifuna to represent him in the matter which firm for reasons unknown to the applicant did not attend court on 11th November, 2015 with the resultant consequence that the application dated 18th February, 2015 was dismissed.

He depones that preparations are at an advanced stage to have the County Surveyor visit the parcels including the one he occupies without his interest being protected and or determined by the court despite being in occupation of a portion measuring 3 Acres in that parcel of land known as Ndivisi/Khalumuli/1737 since 1984.

The applicant is apprehensive that if the process of subdivision proceeds as per the Certificate of Confirmation of Grant, he will be displaced and disinherited of the portion by his step-mother.

The 2nd respondent in her replying affidavit dated 30th January, 2017 accuses the applicant of laches and that no plausible explanation has been given for the delay. That the issues raised herein are the same as the ones raised in this court and the court of appeal.

She further depones that allowing the application would cause her irreparable loss and damage having patiently waited for the conclusion of the matter since 2005. That she has since paid the sum of Kshs 71,000/= to facilitate the survey exercise. That the applicant's presence in this matter is a backdoor re-entry by the co-administrator who is bent on frustrating her realization of the benefits of the judgment.

The matter was disposed of by way of written submissions. The parties complied save the 1st respondent.

The main issue for determination is whether the applicant has advanced sufficient reasons to warrant the orders of 11/11/2015 being set aside and or varied.

The applicant had initially filed an application dated 18th February, 2015 seeking revocation of the grant of letters of administration made to the respondents. After filing the Summons for revocation, he instructed the firm of Sifuna & Sifuna Advocates who filed a notice of appointment on 2nd July, 2015.

The matter was fixed for hearing on 11th November, 2015 where Mr Shifwoka informed court that Mr. Sifuna was unwell. The matter was called an hour later and counsel was not in court thus the application was struck out for non-attendance.

The instant application was filed on 25th January, 2017. Counsel submits that the applicant did not know of the dismissal until when the certificate of confirmation was being implemented.

The 2nd respondent submits that when the applicant was served with the orders to allow the Land Registrar and the Surveyor carry out survey works, the applicant filed the instant application. That a period of 13 months is too long to be excused.

Before going into the merits of the application, the court's attention has been drawn to a disposition by the 2nd respondent that the issues raised in this application are the same as those already addressed by this court and the court of Appeal.

The court has seen the judgement of Justice F.N Muchemi delivered on 10th December, 2009. Even though the parties therein are not the same as in the instant application, the net effect of the orders therein are the same. The parties in that application were Robai Khamala Nakhisa and Jamin Wafula Watakila as the petitioner and objector respectively.

Robai Khamala Nakhisa is the widow of one Ayub Nakhisa Watakila, Jamin Wafula Watakila is the deceased's son and a brother to Ayub Nakhisa Watakila. Robai Khamala Watakila at the time of her husband's death did not know that the applicant was her husband's son born out of a previous relationship. The applicant is therefore the deceased's grandson.

After considering the application, the learned Judge found that the applicant herein is not the deceased's dependant.

Dissatisfied with the Court's finding Jamin Wafula Watakila, not a party in this application, appealed to the Court of Appeal in Eldoret Vide Civil Appeal Number 22/2010 where the court upheld the High Court's findings. The court (Bosire, Okwengu & Maraga JJA) in dismissing the Appeal held;

In the circumstances Aggrey was neither a dependant of the deceased nor was it established that he was the deceased's grandson. The trial Judge cannot be faulted for coming to the conclusion that Aggrey was not a lawful beneficiary of the deceased.

In the instant application, the applicant argues that he is the deceased's dependant by virtue of being a son to one the late Ayub Nakhisa Watakila (the deceased's son). The court finds that this issue has been determined by the court of appeal.

Even if this court was to reinstate the application, there will be nothing new that the applicant will introduce that can alter the outcome. There must be a finality to litigation. The parties need to settle and utilize their respective portions.

This court finds that this being the position, the other grounds in the application fall by the wayside with the resultant disposition being that the application is devoid of merit and is thus dismissed with costs.

It is so ordered.

DATED and DELIVERED at BUNGOMA this 3rd day of June, 2021.

S.N RIECHI

JUDGE