



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT BUNGOMA

ENVIRONMENT & LAND CASE NO. 54 OF 2014

BENSON MANGATE BARASA –(DECEASED)PLAINTIFF

JOSEPH BARASAINTERESTED PARTY/RESPONDENT

VERSUS

AMOS WABWIRE..... DEFENDANT

R U L I N G

BENSON MANGATE BARASA (the deceased) was the plaintiff in this case which he had filed against **AMOS WABWIRE** (the defendant) with respect to the land parcel **NO KIMILILI/KAMUKUYWA/530** and the resultant sub -divisions. The suit was defended and by his ruling dated 9th March 2016 struck out the suit with costs for being res – judicata and also statute barred.

I now have before me a Notice of Motion dated 23rd May 2019 by the defendant seeking to execute the order for costs against **JOSEPH BARASA** (the Respondent) who is the Administrator of the deceased’s Estate. The said application is founded under the provisions of **Sections 3A and 63(e) of the Civil Procedure Act** and is premised on the grounds set out therein and supported by the affidavit of **PAUL KASSIM WAFULA** counsel for the defendant.

The gist of the application is that after the deceased’s suit against the defendant was struck out with costs, the same were assessed at Kshs. 140,000/= but the deceased died before the execution of costs which now stand at Kshs. 189,000/= could proceed. The defendant therefore seeks leave to proceed with the execution of costs of this suit against **JOSEPH BARASA** who is the Administrator of the deceased’s Estate and the Respondent herein.

The application is accompanied with the deceased’s Death Certificate, a temporary grant of Letters of Administration issued to the Respondent and one **BENEDETA NAMALWA MAKOKHA** on 18th October 2017 in respect to the Estate of the deceased, the Certificate of Costs dated 8th June 2016 in the sum of Kshs. 140,000/= and the order issued by this Court on 30th July 2018 substituting the deceased with the Respondent herein. At this point, it is important to clarify that the order issued on 30th July 2018 was subsequently struck out by this Court in a ruling delivered on 22nd November 2018.

The application is opposed and the Respondent filed grounds of opposition dated 10th July 2019 in which he states that the application is not only misconceived and bad in law but it also offends the provisions of **Order 1 Rule 1 of the Civil Procedure Rules** but also the ruling by this Court dated 22nd November 2018.

The application has been canvassed by way of written submissions filed both by **MR KASSIM SIFUMA ADVOCATE** for the defendant/Applicant and **MS MUKHOOLI ADVOCATE** for the Respondent.

I have considered the application, the grounds of opposition and the submissions by counsel.

This application can be determined briefly as follows:

The basis upon which the defendant/Applicant seeks to execute for costs against the Respondent is because on 18th October 2017, the Respondent and one **BENEDETA NAMALWA MAKOKHA** were issued with a temporary grant of Letters of Administration of the Estate of the deceased. It was however also provided in the said temporary grant which is part of the defendant/Applicant’s annexures that: -

“And be it further know that the grant will only be valid for six months.”

The said temporary grant of Letters of Administration was never confirmed. It therefore lapsed six (6) months after 18th October 2017 and in the circumstances, it cannot be the basis upon which the defendant/Applicant can move this Court though his application dated 23rd May 2019 claiming to be the Administrator of the deceased plaintiff's Estate. In **BLACK'S LAW DICTIONARY 9TH EDITION**, the term "***lapse***" is defined as: -

"The termination of a right or privilege because of a failure to exercise it within some time limit or because a contingency has occurred or not occurred."

Therefore, the Respondent **JOSEPH BARASA** ceased being the Administrator of the Estate of the deceased plaintiff on 18th April 2018. No execution of the bill of costs taxed in this case can proceed against him. The application dated 23rd May 2019 is therefore devoid of any merit.

The up – shot of the above is that defendant/Applicant's Notice of Motion dated 23rd May 2019 is hereby dismissed. As the Respondent is not an Administrator of the deceased plaintiff, there shall be no order as to costs.

Boaz N. Olao.

J U D G E

23rd January 2020.

Ruling dated, delivered and signed in Open Court this 23rd day of January 2020 at Bungoma.

Mr Mechi for Applicant

Mr Mukhooli for Respondent absent

Respondent absent

Joy/Okwaro – Court Assistants

Boaz N. Olao.

J U D G E

23rd January 2020.