



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

SUCCESSION CAUSE NO. 175 OF 2008

IN THE MATTER OF THE ESTATE OF THE LATE HARISH CHANDRA HINDOCHA(DECEASED)

CATHERINE MATEI CHENA.....OBJECTOR/APPLICANT

VERSES

PRADEEP HARISH HINDOCHA.....PETITIONER/RESPONDENT

RULING

1. The summons dated 23rd December, 2019 by the Applicant and filed on the 5th day of February, 2020 prays for the following orders;
 - (a) there be stay of the requirement that title deed for Land Parcel number MOISBRIDGE /ZIWA BLOCK 16 (CHEBARUS)/324 be deposited in court together with all consequential orders.
 - (b) time within which the same is to be deposited be extended till the determination of this application or further orders of the court
 - (c) the court be pleased to dispense with the requirement of production of the original title as the same is lost, mislaid or cannot be found despite diligent efforts.
 - (d) the court does order registration of an inhibition to avoid dealings in the suit land pending the hearing of this application and thereafter the case.

(F) pursuant to the foregoing the applicant be deemed to have fully complied with the order given on 18th November 2018.
2. The Applicant has premised her application on the supporting affidavit dated 23rd December, 2019 where she has basically state that she has partially complied with the order of this court dated 18th November , 2019. That she has paid the thrown away costs of Kshs. 60,000 and that she could not avail the title deed as the same was lost.
3. She further attached a copy of the Police Abstract as well as the official search from the lands office showing that the respondent has filed an inhibition on the land or caution on the register and she cannot apply for the fresh title to be issued.
4. The Respondent has opposed the said application vide his replying affidavit dated 21st February, 2020 stating that the Applicant has failed to comply fully with the orders as directed and that she cannot be allowed a second bite on the cherry so to speak. That the time frame given cannot be extended as the orders given were self-explanatory.
5. The court indeed delivered its ruling on the 18th November , 2019 which opened the door to the applicant to have her testify and present her case. It must be remembered that the reason why this court had locked her out of the case earlier was her failure to surrender the original title to the court. The court in fact held her in contempt and all the details are already on record.
6. Having read her application, the main issue is, when did she realise that the title of the suit land was lost? Was it not true that all along prior to the delivery of the judgement she was aware of the missing title?
7. In my considered view, I do not find the Applicant truthful. This is buttressed by her own character. She has failed to deliver the original title. On numerous occasions during trial she promised to deliver but she failed. She did not indicate to the court neither through her numerous counsels that the same was lost. I find this to be an afterthought.

8. Litigation must come to an end. This court extended an olive branch to her on 18th November, 2019. She partially fulfilled. I think she does not deserve a second chance. The efforts she seemed to demonstrate now are an afterthought.

9. The application is hereby dismissed with costs.

Dated, signed and delivered via Zoom at Kitale on this 5th day of May, 2020.

H. K. CHEMITEI

JUDGE

5/5/2020