

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CIVIL MISC. APPLICATION NO. 50 OF 2013

IN THE MATTER OF THE ESTATE OF THE LATE OMOLO ALFRED NDUNDE (DECEASED)

RULING

1. The applicant, Wycliffe Wakhu Omolo, appeared before me on 22nd July 2020, for mention of the matter when the same was due for directions on the way forward. He informed me that he wanted assistance of the court to get his share of the estate of the deceased.

2. This cause, as I understand it, was initiated through a summons for revocation, dated 24th May 2013, seeking to have a grant that had been made in Butere SPMSC No. 89 of 2000 revoked. The grant had been confirmed. The said application was placed before the Judge on 18th March 2014, and the court made the following order:

“Application dated 24/5/2013 is granted in terms of prayers (2)(3)(4) and (5). Mention on 18/6/2014.”

3. Prayers (2)(3)(4) and (5) of the application dated 24th May 2013 read as follows:

“2. That pending the hearing of this summons interpartes, there be stay of administration of the estates of OMOLO ALFRED NDUNDE pursuant to the grant confirmed.

3. That pending the hearing of this summons a restriction be placed against Land Parcel No. Marama/Buchenya/1447, Marama/Buchenya/1448, Marama/Buchenya/1449 and any other title arising from the original Land parcel No. Marama/Buchenya/557 that is the estate of the late OMOLO ALFRED NDUNDE.

4. That the proceedings in the Butere SRMCCC No. 92 of 2008 being continued against the applicant involving the estate of the late being the gist of in this case be stayed pending the outcome of this application.

5. That the grant of letters of Administration intestate to the estate of the deceased herein issued to the petitioner/Respondent on 15/6/2000 vide Butere SPMCC Succession Cause No. 89 of 2000 be an is hereby revoked.”

4. What this in effect meant was that the application dated 24th May 2013 was granted as prayed. The grant made in Butere SPMSC No. 89 of 2000, was revoked by those orders, which would have meant that the orders made in Butere SPMSC No. 89 of 2000, confirming the grant fell by the wayside. Curiously order 2 ordered stay of administration of the grant revoked by order 5. The principal prayer was for revocation of the grant, and once the revocation prayer was granted, the application stood determined. Curiously, orders 3 and 4 were to last during the pendency of the application, the final orders had been made effectively disposing of the application, and leaving nothing pending.

5. Having made final orders with respect to revocation of the grant, there was really nothing pending determination, for the application had effectively been disposed of. It is, therefore, not clear what the mention scheduled for 18th June 2014 was for. The matter was mentioned on 18th June 2014, and the application purportedly argued, despite final orders having been made on 18th March 2014, allowing it in its entirety. There was, therefore, no application dated 24th May 2013 to be argued. Finally, the court made the following order:

“The implementation of the grant is hereby cancelled. The Kakamega Land Registrar and Surveyor to effect the certificate of confirmed grant issued by the Butere court on 13th June 2001 as per the grant. Title numbers Marama/Buchenya/1447 and 1448 are hereby revoked.”

6. It is not clear the basis upon which the orders of 18th June 2014 were made for the application of 24th May 2013 had been disposed of finally and totally on 18th march, 2014. It is also not clear the implementation of the grant that was being cancelled by the order, and equally, it is unclear whether the certificate of confirmation of grant made on 13th June 2001 was still available for implementation, as ordered on 18th June 2014, if the grant upon which the certificate was generated had been revoked on 18th March 2014. My understanding is that once the grant was revoked on 18th March 2014, the certificate of confirmation of grant premised on that grant was not available on 18th June 2014, for the court to order that the said certificate be given effect by the lands officials. The life of the certificate of confirmation of grant came to an end with the grant on 18th March 2014. The court did not review the orders of 18th March 2014, nor declare that the revocation order had not affected the confirmation of the said grant, which would have been feasible only if the court had appointed fresh administration subsequent to revoking the previous grant. That would mean that the certificate of confirmation of grant could not exist for it was not anchored on any grant following the revocation of the grant upon which it was premised. That would mean that there were no orders available for implementation by the lands officials, and that the orders of 18th June 2014 cannot be valid in view of the orders of 18th March 2014.

7. Another application was lodged in the cause on 14th September 2016, dated 10th August 2016, seeking joinder of the land registrar and

surveyor as parties to the cause, and an order to compel them to implement the orders of 18th June 2014. That application was placed before the Judge on 9th November 2016, and was allowed as prayed. In view of what I have stated above, in paragraph 6, the orders of 18th June 2014, referred to a certificate of confirmation of grant that had been rendered destitute by orders made earlier, on 18th March 2014, which made the order of 18th June 2014 invalid. The grant of the orders of 9th November 2016 was an exercise in futility.

8. Be that as it may, I have seen on record a letter from the lands officials, dated 23rd October 2018. It explains why the officials are unable to implement the orders of 18th June 2014, and propose that the parent title, in Marama/Buchenya/557 be restored by cancelling all the titles created from it. That way, the officials may then be in a position to comply with the order of 18th June 2014. No application has been placed before me in that behalf, so as to make it easier for the lands officials to comply.

9. It should be noted that this cause was initiated by way of a summons for revocation of grant. The life of the cause ended when the said summons was allowed. No grant was issued in this cause. No grant exists anywhere, since that made in the Butere cause was revoked. This cause should be closed and the file taken to the archives. The parties ought to make any further applications in Butere SPMCSC Succession Cause No. 89 of 2000, which is the parent file, where the certificate of confirmation of grant, sought to be implemented, was issued.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 2nd DAY OF October 2020

W. MUSYOKA

JUDGE