



ADREPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 1866 OF 1998

IN THE MATTER OF THE ESTATE OF KAMUYU NJIRI (DECEASED)

JOSEPH CHEGE GATAUWA & 3 OTHERSPLAINTIFF

ROBERT KIBATHA HUHO.....2ND APPELLANT

RULING

1. The Application coming for consideration in this Ruling is the one dated 31.5.2019. The application was seeking the following orders.
 - (i) **THAT the Application be certified urgent and be heard exparte in the first instance (SPENT)**
 - (ii) **THAT there be Stay of Execution of the orders and Judgment dated 24.4.2019 pending the hearing and determination of this application.**
 - (iii) **THAT there be a Stay of Execution of the Court's orders and Judgment dated 24.4.2019 BUT delivered on 10.5.2019 pending the hearing and determination of the intended Appeal.**
 - (iv) **THAT the costs of the Application be provided for.**
2. The Application was based on the grounds the effect of the Judgment delivered on 10.5.2019 was to revoke an existing grant and all existing transactions made pursuant to the said grant.
3. Further that the grant was issued in 2001 and various transactions have been undertaken pursuant to the said grant.
4. The 2nd interested party PETER KAMUYU NJOROGE who is the Applicant swore an affidavit in support of the Application in which he has deposed that he is an aggrieved by the Judgment and he has subsequently filed a Notice of Appeal dated 22.5.2019.
5. The Applicant further deposed that the intended appeal will be rendered nugatory unless the Stay is granted and further that the appeal is arguable and it raises various fundamental issues which require adjudication at the final appellate level.
6. The 2nd Interested party filed another Application dated 25/9/2019 seeking a determination on the application dated 31.5.2019 by PETER KAMUYU NJOROGE (the 2nd interested party)
7. This Court delivered a ruling on 20.00.2019 in which the application for stay of Execution dated 23.5.2019 by JOSEPH CHEGE GATAUWA was dismissed. The applicant herein stated that his application dated 31.5.2019 was sidelined and further that his grounds for seeking stay are different from those state in the Application dated 23.5.2019.
8. The Applicant filed written submissions in the Application dated 31.5.2019. The said submissions dated 19.5.2019 states as follows:
 - (i) **THAT the 2ndInterested party was aggrieved with the Judgment rendered on 10.5.2019 and has a Cross –Appeal filed on 10.7.2019 in an Appeal No. 245 of 2019.**
 - (ii) **THAT a Plethora of Court decisions have restated time and again that the purpose of orders of stay of Execution are to prevent an appeal from being rendered nugatory by reason of non preservation of the sub-stratum.**

(iii) **THAT the substratum of the cause is a parcel of land where there is serious contestation as to whether the Objectors/Respondents are children of the deceased and therefor entitled to inheritance and also whether or not the 2nd interested party is a rightful heir.**

(iv) **THAT the said Objectors/Respondents have already applied for confirmation of grant and the 2nd Interested party seeks stay to enable him ventilate the above issues with finality otherwise his appeal would be rendered nugatory.**

9. The 2nd Interested party relied on the case of **BUTT V. RENT RESTRICTION TRIBUNAL (1982) KLR** page 417 where the Court gave guidance on how the Court should exercise discretion while considering an application for stay of execution.

10. The Objector/Respondents also filed written submissions dated 30.7.2019 to both the applications dated 23.5.2019 to both the Applications dated 23.5.2019 and 31.5.2019. The objector stated the Court in its Judgment dated 24.4.2019 delivered on 10.5.2019 found that the grant of letters of administration were fraudulently obtained by concealment of material facts and making of false statement by the Administrator.

11. Further the objector stated that all the transactions carried out on the strength of the grant and Certificate of Confirmation issued in 2001 be nullified and that the properties sold to 3rd parties on the strength of the said grant reverts back to the estate for re-distribution.

12. The objector also submitted that the 2nd interested party's application dated 31.5.2019 is premised on similar grounds as that of the Administrator dated 23.5.2019 and she urged the Court to disregard the two applications.

13. I have perused the file and I find that the 2nd Interested party PETER KAMUYU NJOROGI participated in the issue of the grant that was nullified. He filed a Consent to Confirmation of grant of letters of administration made to JOSEPH CHEGE GATAUWA on 3.5.1999 in that consent, he described himself as a dependent of the estate within the meaning of Section 29 of the Law of Succession Act.

14. The evidence on record is that the 2nd interested party is not a son of the deceased but a Nephew. The Court found that the Administrator concealed material facts and obtained the grant that was nullified fraudulently.

15. The 2nd interested party and the Administrator were both involved in the making of the representation that they were sons of the deceased and on that basis the grant was nullified.

16. The 2nd interested party was a beneficiary of the nullified grand and therefore the reasons stated in the Ruling dated 20.9.2019 apply to the Application dated 31.5.2019.

17. The Court also nullified all transactions carried out on the strength of the nullified grant upon finding that the Administrator made false statements in his application for the grant.

18. The Court found that the deceased had a wife (AGNES WAMBUI) and that he had accepted the two children of AGNES WAMBUI from a previous marriage and I find that the 2nd interested party has no basis for claiming as a beneficiary of the Estate.

19. I find that the 2nd Interested party is not entitled to Stay of Execution for reasons outlined the Ruling dated 20.9.2019.

20. The Application dated 31.5.2019 is accordingly dismissed with costs to the objectors.

DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 8TH DAY OF NOVEMBER, 2019

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI.