

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 731 OF 2007

IN THE MATTER OF THE ESTATE OF ESTHER TAM BINAYO, DECEASED

RULING

1. The application for determination is a Motion dated 1st March 2017. It seeks the review and setting aside of orders made on 29th November 2016, the hearing of the objection proceedings and an order to restrain the Vihiga Land Registrar from dealing with Nyangori/Banji/628 during the pendency of the application. It is argued that there was an error apparent on the face of the record in that the orders of 29th November, 2006 were made in the pendency of objection proceedings.
2. The response to the application, in the affidavit of 3rd July 2017, says that the said Motion is in abuse of court process as the orders of 29th November 2016 were made after the court had considered all the factors.
3. The application was argued orally before me on 4th July 2018, when counsel for the parties breathed life to the Motion.
4. The record indicates that the orders made on 29th November 2016 allowed an application dated 7th October 2016 in terms of prayers 1 and 2 thereof, as the same was not opposed. The application dated 7th October 2016 sought confirmation of grant. There is nothing on record to show that the same was ever served on all the persons beneficially entitled, neither does it indicate whether any of the persons beneficially entitled attended court at the confirmation of the grant.
5. The objection proceedings alluded to is the summons for revocation of grant dated 25th August 2010. There is nothing on record to indicate that it has been disposed of one way or the other. Indeed, it was ruled on 19th July 2012 that the issues raised in that application be determined first before the estate is distributed. The ruling of 19th July 2012 set aside orders that had been made on 27th September 2011 distributing the estate.
6. I believe there is merit in the application before me. I shall accordingly allow the same in the terms proposed. Let all the pending objections be exhausted before the estate is distributed. The matter shall be mentioned on a date to be given at the delivery of this ruling for directions on the disposal of the summons for revocation of grant dated 25th August 2010.

DATED, SIGNED and DELIVERED at KAKAMEGA this 3RD DAY OF DECEMBER , 2018

W. MUSYOKA

JUDGE