

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

CIVIL MISCELLANEOUS NO. 16 OF 2016

SAMWEL CHACHA NYAMIBIRI.....APPLICANT

VERSUS

ROBI MUKIRA NYAMBIRI & 2 OTHERSRESPONDENT

RULING

1. The application under consideration is a Notice of Motion dated 17/03/2016 taken out by the Petitioner. It seeks an order of this Court for the provision of security towards the implementation of the Certificate of Confirmation of Grant issued on 18/12/2015 in Kisii High Court Succession Cause No. 325 of 2014 before this matter was transferred to this Court.

2. In support of the application is the Petitioner/Applicant's Affidavits sworn on 17/03/2016 and 18/03/2017. Briefly, the Applicant avers that since the confirmation of the Grant in this Cause in 2015, its implementation has been hampered by the fact that the Respondents are not willing to attend to the Land Registrar and the Surveyor and undertake the sub-division of the property known as BUKIRA/BWISABOKA/702 as decreed by the Court. Instead, the Respondents have resorted to violent ways in order to curtail any efforts towards the realization of the decree and as such the Land Registrar and the Surveyor have been unable to visit the *locus quo*.

3. The application is opposed by the filing of a Replying Affidavit of ROBI MUKIRA NYAMBIRI sworn on 20/04/2016 and filed in Court on 08/11/2016. It is contended that the Grant which is sought to be enforced is a subject of a revocation application which was filed in Kisii High Court Succession Cause No. 20 of 2014 and that the application is still pending determination. Instead of allowing the current application, the Respondents urges this Court to consolidated this application with the revocation application in the said Kisii High Court Succession Cause No. 20 of 2014 so that the dispute would be determined at once.

4. In a rejoinder, the Applicant contends that he has never been served with the alleged revocation application or any order thereto and that the Kisii High Court Succession Cause No. 20 of 2014 was a Citation Cause which was closed upon the Applicant being granted leave to take out succession proceedings in respect to the estate of the deceased in this cause. The Applicant confirms that he instituted Kisii High Court Succession Cause No. 325 of 2014 and obtained the Grant and the Certificate of Confirmation which he now seeks to implement.

5. The application was orally heard and Counsels reiterated their rival positions which this Court has taken into consideration. It is not in dispute that in 2015 the High Court in Kisii in Succession Cause No. 325 of 2014 confirmed a Grant and issued a Certificate thereto. Neither that Certificate nor the Grant has been revoked, stayed or set-aside since then. I have seen a copy of a revocation application by the first Respondent filed in Kisii High Court Succession Cause No. 20 of 2014. That cause was a Citation and was indeed closed on the grant of leave to the Applicant herein. The averment that this Cause be consolidated with that Citation Cause is clearly misleading and in any event it is overtaken by events. It is also contended that the said application has never been served upon the Applicant despite Counsel for the Respondents indicating that the application for revocation had been set for hearing on 11/04/2017. That was on 27/03/2017.

6. What the Applicant seeks to achieve through the current application is the implementation of a Court decree which was issued in 2015 and so remains to date. The Certificate of Confirmation of the Grant

names the Applicant as one of those entitled to one-quarter share of the property known as **BUKIRA/BWISABOKA/702** and it is the Applicant's contention that he seeks no more than what was decreed to him.

7. I am persuaded that the application is merited. I say so because the Applicant has deponed to the efforts taken by the Land Registrar and the Surveyor towards the implementation of the decree of the Court in vain. The Applicant then resorted to the intervention of this Court and one wonders why the Applicant should waste his time and resources in Court if there was no hindrance towards the implementation of the decree in Succession Cause No. 325 of 2014.

8. The upshot is that the Notice of Motion dated 17/03/2016 is hereby allowed with costs.

DELIVERED, DATED and SIGNED at MIGORI this 10th day of May 2017.

A. C. MRIMA

JUDGE