



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
IN THE MATTER OF THE ESTATE OF ANDREW KISA SAIKWA (DECEASED)
SUCCESSION CAUSE 599 OF 1986

RULING

INTRODUCTION

This matter commenced before this Court on 7th June 2017 and the Court sought ample time to read through the voluminous Court file and familiarize itself with the substance of the matter.

On 9th June 2017, The parties represented by Counsel informed the Court of the pending applications for hearing and determination. the crux of the matter was which application ought to be heard first; the application of 11th May 2015 filed at the instance of the interested party to seeking review of the Court orders of the Trial court of 9th May 2016 or the application of 29th April 2016 filed at the instance of beneficiary Moses Kiplangat pursuing contempt of Court proceedings against the executor and interested party.

Counsel for beneficiary Moses Kiplangat brought to the attention of the Court that there was a pending application in the Environment and Lands Court of the High Court in Miscellaneous Suit 183 of 2015 that required to be disposed off first and the said Court sought the instant Court file to peruse and determine the application. The request was granted.

On 11th July 2017 all parties represented by counsel appeared in Court and Counsel for beneficiary Moses Kiplangat confirmed that the Environment and Lands Court had delivered Ruling on the pending application on 23rd June 2017 and the said Court file was remitted to the Family Court of the High Court to hear and determine the matter.

This Court took time to peruse the ELC Court file 183 of 2015.

On 17th July 2017 the parties and Counsel appeared in Court and the court read out the salient issues pending for hearing and determination in form of Rulings delivered with regard to the matter to date and the pending live applications awaiting hearing and determination as follows;

- a) Application filed in form of Chamber Summons of 2nd October 2015 by Moses Kiplangat and Peter Saikwa seeking accounts of the estate from executor
- b) Application of 29th April 2016 for contempt of Court against Executor and interested party
- c) Application of 11th may 2015 for review of the Court orders of 9th May 2016.

The rulings in the Court file are;

- a) The Ruling dated 9th May 2015 upheld orders by Hon. Justice GBM Kariuki restoring the title of suit property LR 209/8558 to the executor; the executor John Saikwa and Esther Chepkemoi to render accounts over the suit property and the Executor to determine within 45 days the distribution of the suit property between the beneficiaries of the deceased's estate.
- b) The Ruling of 18th December 2015 allowing and granting the interested 3rd party to be enjoined to the proceedings.
- c) The Ruling of 11th May 2016 that the Trial court would proceed with hearing the application for review of 11th May 2015
- c) The Ruling of 17th March 2017 the Court considered both applications which are high -lighted above and the Trial Court noted that while the hearing of the application for review was ongoing the application for contempt of court was filed. In light of the age of the case over 20 years, and the fact that spirited efforts caused delay of the matter, The application was filed midstream while the matter regarding review was ongoing, the matter for review would continue and not contempt of Court application taking precedence.

Mr. Lagat for interested party Vomorono Limited informed the Court that the application for review ought to take precedence as the same was ongoing before the Trial Judge and written submissions were filed then the application for contempt was filed . The Trial Court's ruling of 11th May 2016 set the application for review be heard first.

Mr. Isindu for one beneficiary, Moses Kiplangat relied on the case of **ECONET WIRELESS KENYA LIMITED vs. MINISTER FOR INFORMATION & COMMUNICATION OF KENYA & ANOTHER (2005) eKLR**

...an alleged contemnor will not be allowed to prosecute any application to set aside orders or take any other step until the application for contempt is heard.....the reasons for this approach are obvious- a contemnor would have no right of audience in any court of law unless he is punished or he purges the contempt. So, the court is obliged to hear the application for committal first before any other matter. This is the rule which must be applied strictly.

This position of law cannot be wished away.

Conversely, the Trial Judge's Ruling of 17th March 2017 had valid reasons to prioritize the hearing and determination of the application for review as explained; this is an old matter, the same was been delayed by various circumstances and it is crucial the estate is distributed to the beneficiaries of the deceased's estate over 20 years later.

Therefore both assertions are competing positions each of them valid. This Court will pursue the same vein that the estate of the deceased shall be expeditiously dealt with by parties , their respective Counsel and Court to determine each party's beneficial interest and/or proprietary right over the undistributed part of the deceased's estate.

DIRECTIONS

- 1.The application of Contempt of Court filed on 29th April 2016 shall be heard TOGETHER WITH;**
- 2. The application of review of Court orders of 9th May 2015 filed on 11th May 2015.**
- 3. There shall be maintenance of status quo of the estate of the deceased, no dealings in respect of the assets/properties that comprise of the deceased's estate until final determination**

and entitlement of each beneficiary or further orders of the Court.

4. Parties and respective Counsel to agree on modalities on proceeding with both applications on the next hearing date.

5. The hearing *interpartes* is scheduled on

DELIVERED DATED SIGNED IN OPEN COURT ON 20TH JULY
2017

M.W. MUIGAI

JUDGE

IN THE PRESENCE OF;

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