



REPUBLIC OF KENYA

HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 389 OF 2009

VERONICA MWOTHIRUPETITIONER/APPLICANT

Versus

ALEXANDER NKUNJA M'IMARIA.....RESPONDENT

RULING

Removal of inhibition

[1] By a Notice of Motion dated 27th May 2015, the Petitioner seeks for removal of the inhibition placed upon ITHIMA/NTUNENE/558. And of course she seeks for an order for costs. The said application is supported by the affidavit of Veronica Mwothiru sworn on 27th May, 2015. The application is primarily premised upon the following grounds:

- (a) That the inhibition herein had been placed pending the hearing and determination of application dated 25th June 2012.
- (b) That the said application was dismissed and no appeal was preferred on the dismissal.
- (c) That shares of the respective beneficiaries were determined but transfer thereof has been rendered impossible by the said inhibition.
- (d) That the inhibition should be removed to facilitate transfers herein, and complete distribution of the estate.

Petitioner's submissions

[2] The petitioner filed submissions in which she amplified the above grounds of the application. Much emphasis was laid on the fact that distribution has been halted by the presence of the inhibition orders which orders had been issued as intermediate measures pending hearing and disposal of application dated 23rd June 2012. Ultimately, the said application was dismissed.

Pure Disobedience

[3] The Respondent and his counsel did not file any submissions to this application despite having been given ample time to do so. In fact, at one time on 16th February, 2016, the court made a specific finding arising from the conduct of the Respondent and his counsel to the effect that they seemed not to be interested in this matter. But despite the finding, and purely in the interest of justice, the court again directed the Respondent to file submissions on the application dated 27th May, 2015 within seven(7)

days. The order was served on the Respondent but on the next appointed date, i.e. 23rd February, 2016 the Respondent had not filed any submissions. It is upon this deliberate refusal to comply with court orders the court ordered that it will determine the application herein on the material filed in court, hence this ruling.

Respondent's view of the matter

[4] The above failure to file submissions notwithstanding, the Respondent filed a replying affidavit sworn on 23rd June, 2014 which I will consider. The major averments in opposition to the application dated 27th May 2015 are:

(a) That upon dismissal of his objection on 3.4.2014, he applied for certified copies of the ruling, a copy of which was supplied to his advocate on 24.4.2014 except to date copies of the proceedings have not been supplied to him.

(b) That he is still desirous of pursuing an appeal in the Court of Appeal and so the court should preserve the subject matter of the appeal as he pursues his opportunity to appeal.

(c) That the petitioner shall not suffer any prejudice if the current status of the land is maintained. But if the land is transferred to 3rd parties it will be great prejudice to him.

DETERMINATION

[5] Upon meticulous consideration of the arguments by the parties and the applicable law I take this view of the matter. As a rule of law, upon confirmation of the grant, the person to whom grant of representation has been made should inter alia:-

(a) Distribute or retain on trust (as the case may require) all the net assets of the estate according to the respective beneficial interests therein under the will or on intestacy, as the case may be.

(b) Within six months from the date of confirmation of the grant, or such other longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration.

These are some of the statutory obligations of the personal representative of the estate of the deceased and should never be delayed unless upon there is a specific order of the court stopping or delaying distribution and administration of the estate of the deceased. See the Law of Succession Act and more specifically Sections 79-86 thereto. See also the case of **STEPHENS & 6 OTHERS vs. STEPHENS & ANOTHER [1987] KLR 125** where it was held inter alia that:-

“A personal representative of a deceased is under a duty to pay all debts of the estate and thereafter distribute the rest of the estate to his (sic) beneficiaries”.

Be that as it may, the challenge to the grant of letters of administration by the Respondent was dismissed by this court (Lesiit J) in the decision delivered on 3/4/2014. The confirmed letters of administration were upheld. There has been no appeal that was lodged against the said dismissal of the objection. The Respondents only averred that he had applied for certified copies of proceedings which are yet to be provided by the court. I must state that mere averment by the Respondent that he is still desirous of pursuing his appeal will not suffice as a stay order. I have not also seen or been shown any stay order or an order for the preservation of the estate property either from this court or the Court of Appeal. The true position of things is that the grant herein was confirmed on 7th March 2012. Much time has passed by and events in this case are turning into a major source of injustice to the beneficiaries and to the law. The existence of the inhibitions on the estate property is now an infringement of the law of succession. I do not therefore agree with the assertion by the Respondent that the Petitioner will not suffer any prejudice if

the property is preserved. There is everything to be suffered by the petitioner and beneficiaries herein. To say the least, what preservation is the Respondent talking about when he has not been keen on pursuing his intended appeal or applying for preservation orders from court for such a long period of time? Therefore, in the absence of any appeal and attendant order thereto staying administration of the estate, mere intention to appeal cannot be allowed to delay the finalization of administration of this estate. The Respondent's conduct is akin to temporizing of this cause for as long as he wants-something a court of law should never allow. Of great significance to note is that the inhibition issued herein was time bound and saddled upon the hearing and determination of the application dated 25th June, 2012. Thus, once the application was dismissed the inhibition fell by the way side and ought to have been removed forthwith. However, it is always convenient to have a formal order of the court removing the inhibition- which should be applied for at earliest opportune moment. I wish this order had been sought from court immediately on the dismissal of the challenge herein or soon thereafter, and I am sure the delay I am seeing could have been avoided. Nonetheless, the application before me is for that purpose. And the upshot is that I allow the application dated 27th May, 2014 and order that the inhibition placed on ITHIMA/NTUNENNE/58 be removed forthwith. The administrator to complete administration of the estate within shortest time possible and file in court, within 6 months, a full and accurate account of the completed administration. This being a family matter, I will not condemn the Respondent to pay costs of this application. Instead, I order each party to bear own costs of the application. It is so ordered.

Dated, Delivered and Signed in court at Meru this 11th day of April,2016

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F. GIKONYO

JUDGE

In the presence of:

Muthomi advocate for M/s, Kiome advocate for applicant.

Gitonga advocate for the respondent - absent.

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F. GIKONYO

JUDGE