

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 97 OF 2010

In The Matter Of:

The Estate of the Late Nchebere Guau- (Deceased)

TEREGINA MUNGAI M'NTHAKA.....PETITIONER

RULING

Removal of inhibition

[1] By a Summons dated 22nd July 2015 which is expressed to be brought under Rules 73 and 49 of the Probate and Administration Rules, the Petitioner is seeking for the removal of inhibition and caution registered against Land parcel No. NYAKI/THUURA/1363. The application is supported by the Petitioner's affidavit sworn on 22nd July 2015. The Petitioner also filed written submissions dated 8th February 2016 in support of her said application. From the application and other pleadings filed by the Petitioner, the reasons given for applying are two. The first one is that the Petitioner applied for and was granted a temporary order of inhibition over the above estate property land in MERU PMCC NO. 112 OF 1984. In that suit, she was the Defendant in the suit and the deceased was the plaintiff. She has annexed an order issued on 9th June 1994 by Solomon Wamwayi, Chief Magistrate at the time. She claims that she could have applied in the above mentioned suit to lift the temporary inhibition order but the court file cannot be found. Again, her previous advocate also died and she engaged G.M. WANJOHI ADVOCATES to deal with the said case but he was not able to obtain all the documents from the deceased advocate. It has, therefore, become impossible for her to even apply to reconstruct a skeleton file. The second reason is that the caution registered herein was by one Jospiter M'Adaka who is now deceased but who was the husband of the Petitioner. This property is the estate property herein for which the Petitioner is the administratrix but because of the said inhibition and caution she is unable to administer and distribute the estate in accordance with the confirmed grant. She, therefore, applies for the removal of the inhibition and caution on the property.

DETERMINATION

[2] I have carefully considered the application before me. First of all, the application for revocation dated 30th October 2015 has been dismissed by this court. There is therefore no impediment to the administration of the estate herein except the inhibition and caution registered on the estate property. I have perused this file and the following is useful information. The caution was registered on 25th October 1974 by SOSPHITER M'DAKA, now deceased claiming purchaser's interest. The said SOSPHITER was the husband of the Petitioner. The Petitioner also filed a suit against the deceased in MERU PMCC NO 112 OF 1984 and she obtained a temporary inhibition which was registered on 10th June 1994. The inhibition and the caution remain in force until now; hence the application dated 22nd July 2015. That is not all. It seems that the deceased during his lifetime sold his property, now the estate property, to the husband of the Petitioner, who is also deceased. But, the deceased refused or failed to transfer the said land to the Petitioner's late husband. He had not done so at the time he died. The Petitioner was, nonetheless eager to have the transaction completed by the children of the deceased and issued a Citation to persons entitled to accept or refuse letters of administration intestate in respect of the deceased. This was the appropriate legal path available to the Petitioner. The citees did not take out letters of

administration intestate after being served with the Citation and so the Petitioner filed for letters of administration intestate, hence these proceedings. The Petition was duly gazetted and letters of administration were granted to the Petitioner. The grant was then confirmed on 11th December 2013 after the beneficiaries were served with the Summons for Confirmation of Grant.

[4] Upon careful consideration of the facts of this case, the caution and the inhibition were registered by the late husband of, and the Petitioner, respectively, to safeguard their interest in the land. The caution has been over taken by events as the cautioner is deceased. I even wonder whether the Registrar should allow a caution to remain in force for such long period of time or maintain it even where it is brought his attention that the cautioner is deceased. These events should be catalyst of some sort of action on the part of the Registrar to remove the caution. I do not think in the circumstances of this case, it is legally tenable to sustain the caution placed by the late husband of the Petitioner. Again, although the original file number MERU PMCC NO 112 OF 1984 is missing, on the material available and the fact that the property in issue is the estate property herein, the inhibition on the estate property is also untenable. I note it was placed by an order of the court issued at the instance of the Petitioner against the deceased. I must admit that I was careful to make a preliminary inquiry into all the relevant facts of this case and I meticulously perused the file to ensure that the right and appropriate proportion is allotted to the most important events and issues herein. I am minded that, as a matter of law, administration of the estate of the deceased should proceed diligently and be completed without delay. Accordingly, I do not consider these inhibitions and caution should stand on the way of administration and distribution of the estate property. As such, I direct that the caution and inhibition registered upon the estate property more specifically, Title NO. **NYAKI/THUURA/1363**, on 25th October 1974 and 10th June 1994 respectively, shall be removed forthwith. The confirmed grant shall accordingly be implemented without delay. In the upshot, I allow the application dated 22nd July 2015. It is so ordered.

Dated, signed and delivered in open court at Meru this 11th day of

July 2016

F. GIKONYO

JUDGE

Mr. Gitonga advocate for Petitioner

Mr. Mwirigi advocate for applicant

F. GIKONYO

JUDGE