



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KITALE
SUCCESSION CAUSE NO. 94 OF 2000
JOHN SIKUKU WEBUYE.....DECEASED
AND
ANNE NALIAKA SIKUKU.....PETITIONER
VERSUS
MILLY NANYAMA KHAREMWA.....INTERESTED PARTY

R U L I N G

By her application dated 15/8/2007 the applicant/interested party prays that the consent order entered on 23/2/2001 be reviewed and set aside.

The same is supported by her affidavit sworn on the even date. The said application appears not to be opposed by the respondent herein.

The applicant is the administratrix of the estate of the late Samson Kharemwa Butasi who owned land Parcel No. Kakamega/Mois Bridge/ 18. The petitioner herein Anna Naliaka Sikuku while petitioning for the letters of administration in the estate of John Sikuku Webuye apparently included the said parcel of land as part of that estate. The applicants then objected.

The parties did appear before Justice NAmbuye (as she then was) and recorded the following consent;

(1) the status quo regarding land parcel no Kakamega/Mois Bridge/18 be maintained whereby Milly Nanyama kharemwa to continue residing and using the land.

(2) Both parties in Succession cause NO. 369/98 hereby Milly Nanyama Kharemwa and James Webi who are the administrators not to process sub divide and transfer of the land to the beneficiaries as set out in the certificate of confirmation issued on 11/12/2000 and the petitioner in Succession No. 94/2000 that is Ann Naliaka Sikuku is not to process sub division and transfer of the suit land or include the parcel of land in her application for confirmation yet to be issued by this court.

3. Milly Nanyama Kharemwa to file substantive suit regarding parcel no Kakamega/Moi's Bridge/18 for the court to determine ownership of the land.

4. These orders to operate in P&A Cause No. 369/98

5. Mention on 22/3/2001.

From then nothing seemed to have taken place except correspondences from all sides especially the applicant who seemed to have health issues.

Having perused the application together with the applicants submissions as well as the history of this matter, I find that this is a matter which the court can review and set aside the consent order for the following reasons.

Firstly, there are 2 estates herein, namely estate of the late Samson Kharemwa Butasi which already had proceedings on namely P&A 369/1998 at Kitale and the current application.

Secondly this current petition is over the estate of John Sikuku Webuye.

Both are independent and distinct. If the point of convergence is the suit property Kakamega/Moi's Bridge/18 then the only place to ventilate is in P&A 369/98.

I do not find it visible to have two estates consolidated.

The logical way to do perhaps was to stay one estate in respect to the subject property pending the determination of the other.

In my view therefore nothing is lost by either of the protagonist. Each will still have an opportunity to ventilate their issues. If indeed the deceased owned the impugned property the respondent will still have the chance to file any objection proceedings.

Otherwise to superimpose the property owned by someone else in a separate cause as in this case would muddle up issues and cause great injustice to the parties.

My above finding is premised on the Provisions of Article 159 of the Constitution which expects that Justice shall be done without undue delay and technicalities. Both estates have suffered greatly over the years as they have been unable to deal either way with the subject parcel of land.

Consequently I shall allow the application herein by setting aside the consent order dated 23/2/2000.

Each party shall bear their respective costs.

Delivered this 5th day of October .2016.

H.K. CHEMITEI

JUDGE