

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1463 OF 1991

IN THE MATTER OF THE ESTATE OF GITAU CHEGE KIBERA (DECEASED)

RULING

1. This is supposed to be a judgment found on the oral testimonies recorded from the witnesses who testified before me on 21st January 2013, 10th March 2014 and 5th May 2014. I have not prepared a judgment because it is not clear to me from the record what the proceedings conducted as from 21st January 2013 were for.
2. The hearing fixed for 21st January 2013 was for the Summons for revocation of grant dated 6th December 1995. After I perused the file, it dawned on me that the said application was heard by Aluoch J. and disposed of on 19th September 2002, so the proceedings I conducted from 21st January 2013 cannot possibly relate to that application.
3. The record also indicates that on several occasions dates were given at the registry for the hearing of a Summons for revocation of grant dated 17th October 2001. That Summons was given a date on 2nd August 2010 for hearing on 26th January 2011, and on 11th February 2011 for hearing on 6th July 2011, and on 27th July 2011 for hearing on 7th February 2012. I have carefully gone through the record, but I have not been able to trace a copy of the Summons for revocation of grant dated 17th October 2001 neither have I seen any minute on the disposal of the said application.
4. There is also reference to a Summons for revocation of grant dated 15th May 2001. It was given a date on 22nd October 2003 for hearing on 21st January 2004, again on 25th May 2004 for hearing on 5th October 2004, for 20th April 2005 for hearing on 29th June 2005, on 14th July 2005 for hearing on 29th November 2005, on 16th December for hearing on 3rd April 2006, on 24th April 2006 for hearing on 1st October 2006 and 14th March 2007 for hearing on 26th June 2007. Yet I have not found a copy of the application in the record before me, nor is there minute of the disposal of the said application.
5. There are also directions on record for the filing of an application for distribution of the estate. These directions were given by Rawal J. on 11th October 2006 and 8th November 2006. On 7th July 2007 Aluoch J. directed the objector to file a protest to application for confirmation filed by the administrators. The final directions on distribution were made by Kimaru J. on 16th June 2010, when it was ordered that the dispute on distribution be determined on the basis of *viva voce* evidence.
6. I have looked at the written submissions filed by the parties on 18th June 2014 and 25th November 2014, but I have found little guidance there. The protestor's submissions appear to be based on a protest to distribution, while the respondent's submissions address me on revocation of the grant.
7. In view of the above, it would be imprudent to embark on preparing a judgment when it is not clear what exactly I should be writing the judgment on. I direct parties to peruse the court file, and thereafter, on a date to be given at the delivery of this ruling, to address me on what is outstanding and therefore what should be the basis of the determination that I should make founded on the recorded evidence.

DATED, SIGNED and DELIVERED at NAIROBI this 2ND DAY OF OCTOBER, 2015.

W. MUSYOKA

JUDGE