



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 112 OF 1999

IN THE MATTER OF THE ESTATE OF:

MUGA MUCHEKE ALIAS MISHECK IBUURI.....(DECEASED)

LUCY KANYUA.....PETITIONER

VERSUS

DORISMAKENA.....INTERESTED PROTESTOR/APPLICANT

R U L I N G

1. The applicant DORIS MAKENA through an application dated 23rd May, 2011 brought pursuant to Section 47 and 76 of the Law of Succession Act and Rule 44 of the Probate and Administration Rules and Section 128 of the Registered Land Act(repealed) sought inter alia the following orders:-

128. (1) the court may make an order (hereinafter referred to as An inhibition) inhibiting for a particular time, or until the occurrence of a particular event, or generally until further order, the registration of any dealing with any land, lease or charge.

(2) A copy of the inhibition under the seal of the court, with particulars of the land, lease or charge affected thereby, shall be sent to the Registrar, who shall register it in the appropriate register, and

no inhibition shall bind or affect the land, lease or charge until it has been registered.

2. That before the application could be heard the petitioner filed a notice of preliminary objection on point of law dated 7th March, 2014 setting inter alia the following grounds:-
 1. ***The protestor/applicant's chamber summons dated 23rd May, 2011 is res judicata, as a similar application dated 10th June, 2014 seeking similar prayers was filed by the applicant and 4 others and the same was heard and dismissed with costs to the respondent/administrator/petitioner herein on 23rd January, 2006 by Justice Isaac***

Lenaola

2. ***The said ruling by Justice Isaac Lenaola dated 23rd January, 2006 was never appealed, reviewed and/or set aside by the applicant/protestor and therefore, the Chamber Summons dated 23rd May, 2011 is incompetent, bad in law and an abuse of the court process.***
 3. ***This is a concluded matter wherein the Estate of the deceased namely land parcels Nos. Ntima/Ntakira/3847 and Ntima/Ntakira/2851 were distributed to the respective beneficiaries who have since been registered with their respective portions and/or shares by way of transmission and therefore, there is no estate of the deceased now available for re-distribution.***
 4. ***Litigation must come to an end.***
 5. ***The chamber summons dated 23rd May, 2011 should therefore be dismissed with costs to the administrator/petitioner.***
3. When the preliminary objection came up for hearing Mr. Nyamu Nyaga learned advocate appeared for the intended protestor.
 4. Mr. Nyamu Nyaga learned Counsel for the petitioner urged that he relied on all the five grounds of objection arguing that the interested party/applicant filed similar application dated 10th June, 2004 seeking similar prayers which was heard and dismissed on 23rd January, 2006. He attached a copy of the ruling in support of the preliminary objection and pointed out that he was relying on pages 4 and 6 of the court's ruling as highlighted under paragraphs 7,8,11 and 12 of the ruling by Honourable Mr. Justice Isaac Lenaola. He concluded by submitting that the matter was heard and finalized hence the present application is res judicata.
 5. Mr. Kaimenyi, learned advocate for the intended interested party/applicant submitted that they were opposed to the preliminary objection. He urged the present application is different from the application dated 10th June, 2005 in that in the application of 10/6/2005 the applicant was Mugambi Mukiira Buuri and that the current applicant had not signed a consent allowing Mugambi to bring up that application. He urged the application dated 23rd May, 2011 seeks 8 prayers while the one dated 10/6/2004 was seeking enlargement of time.
 6. Mr. Nyamu Nyaga learned advocate in his response urged that the ruling of 23rd January, 2006 was not denied nor did the applicant deny she was a party. He further submitted that Mugambi Mukiira Buuri swore an affidavit on his behalf and all applicants, who included the applicant herein. He urged the court's ruling has not been appealed against. He urged the prayers are the same. He also submitted that they needed not attach the application and ruling as they are part of this court record. He concluded by submitting that the two applications are not different.
 7. The court has carefully considered the application dated 10/6/2004 and 23rd May, 2011, the ruling dated 2nd January, 2006, the oral submissions by both counsel for and against the preliminary objection. The issue for determination is therefore whether the present application is res judicata by virtue of court's ruling dated 2nd January, 2006.
 8. The application dated 10th June, 2004 was seeking enlargement of time for the filing of the objection on the grounds on the face of the application whereas the application dated 23rd May, 2011 sought operation of stay of certificate of confirmation of grant issued to Lucy Kanyua on 9th February, 2009 and revocation and or annulment of the grant, leave to file protest out of time, inhibition order to issue against land parcel Ntima/Ntakira/2847, stay of proceedings in Meru CMCC No. 28 of 2011, grant of letters of administration in the deceased estate to be issued jointly to the petitioner and the applicant. The grounds on which the application is based are on the face of the application.
 9. The grounds in support of the two applications are the same apart from the current application

having many prayers, some of which relate to civil claim which succession court has no jurisdiction to deal with. The parties are all the same save in the current application in which the applicant has removed the names of the other applicants in the application dated 10th June, 2004.

10. The ruling dated 2nd January, 2006 under paragraph 7 noted the applicant migrated to USA and was not interested in the estate of her deceased father as she had been given another piece of land by her father which she sold together with her mother Grace Kanono (deceased). Under paragraph 8 the court held the original petition was filed with applicants consent and court found the applicants knew of and were aware of the original cause being filed and cannot turn about and claim they were not consulted. Under paragraph 11 court found that the applicant and her mother had another piece of land and had no interest in the parcels which were in dispute in this cause whereas under paragraph 12 court found the applicants cause to be tainted with inconsistencies and as the present applicant had clearly demonstrated she had no interest in the matter court ordered that the matter do stay that way. The issues raised in present application in spite of there being many prayers, which are similar to the prayer in earlier application and the same being based on same ground which were sufficiently considered and rejected in the ruling of 2nd January, 2006 I find that the current application is res judicata. Significantly the applicant has not appealed or sought review of the ruling dated 2nd January, 2006. Litigation has to come to end as parties cannot be allowed to abuse the process of court through unnecessary and unjustifiable application.

11. In view of the above and having come to the conclusion that I have, I find the preliminary objection merited and the same is upheld. The petitioner gets costs of this application.

DATED, SIGNED AND DELIVERED AT MERU THIS 8TH DAY OF OCTOBER, 2014.

J. A. MAKAU

JUDGE

Delivered in open court in the presence of:

1. Mr. Nyamu for the petitioner
2. Mr. Kaimenyi for the intended protestor/applicant

J. A. MAKAU

JUDGE