

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE 197 OF 1997

RUKARIA M'TWERANDU PETITIONER

VERSUS

DR. LEONARD KIMEU MWANTHI OBJECTOR

RULING

The present respondent sought in an application dated 6th July 1998 that the grant issued to the petitioner be revoked. In dismissing that application the court (Mulwa, J) ordered that there be an inhibition against the suit land No. NTIMA/IGOKI/3183:-

“.....until the applicant brings a proper claim against the estate.”

That order is the subject of this application, in which the applicant is seeking that the order of inhibition be reviewed, varied and/or set aside.

The application is based on the grounds that the order of inhibition had not been sought by the respondent in his application for revocation of the grant which was dismissed. That the order of inhibition having been issued over eight (8) years ago is prejudicial to the applicant as the same has stalled any distribution of the estate. That although the respondent has filed a suit as directed by the court, he has not expeditiously prosecuted it.

The respondent argues in his replying affidavit that the certificate of confirmation of the grant bears wrong date and furthermore the confirmation was by an incompetent officer, the Deputy Registrar. The respondent has further averred that indeed the order of inhibition in question was not registered as there was an earlier registered order inhibiting any dealings with the suit property.

These in brief are the arguments in this matter. Regarding the validity of the grant, I have had an occasion in this matter in a ruling dated 20th July 2007 to state that that issue had been raised in the application which was dismissed on 4th July 2002.

The main issue for determination now is whether the inhibition order of 4th July 2002 ought to be reviewed and/or set aside. It is noted that the applicant has not annexed any evidence of the existence of that order being registered. The respondent on the other hand has averred that the order of 4th July 2002 was never registered. To buttress this position he has annexed a copy of the green card showing the existence of both a caution and inhibition. The caution was registered on 2nd July 1998 while the inhibition order entered on 14th December 1998.

While it is apparent to me that the inhibition of 14th December 1998 was entered pursuant to Etyang J's order issued on 7th December 1998, I am unable to trace the basis of the caution registered on 2nd July 1998. The suit property is registered under the Registered Land Act. Cap 300 (the Act) Inhibition in terms of section 128(1) of the Act can be issued by the court for a particular time, or until the occurrence of a particular event, or generally until further order. It is a mandatory requirement that a copy of inhibition be registered.

The inhibition issued on 4th July 2002 was neither sought in the application dated 6th July 1998 nor registered. It is therefore not available for setting aside. The inhibition registered on 14th December 1998 was to remain in force pending the determination of this cause. This cause has not been determined.

For the above reasons, this application fails and is dismissed with costs to the respondent.

Dated and delivered at Meru this 3rd day of October 2008.

W. OUKO

JUDGE