



REPUBLIC OF KENYA



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In re Estate of Pila Musa Ang'aha alias Pila Ang'aha (Deceased) (Succession Cause 97 of 2021) [2025] KEHC 2252 (KLR) (25 February 2025) (Ruling)

Neutral citation: [2025] KEHC 2252 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
SUCCESSION CAUSE 97 OF 2021**

JN KAMAU, J

FEBRUARY 25, 2025

(FORMERLY KAKAMEGA HIGH COURT SUCCESSION CAUSE NO 816 OF 2015)

**IN THE MATTER OF THE ESTATE OF PILA MUSA
ANG'AHA ALIAS PILA ANG'AHA (DECEASED)**

BETWEEN

DAMARIS ONEA OKINDA OBJECTOR

AND

ANNE WAKA OYALO RESPONDENT

RULING

1. In her Notice of Motion dated and filed on 27th May 2024, the Objector herein sought for orders that this court review and/or set aside its Ruling issued on 30th April 2024 and give directions on the application for revocation of Grant dated 28th October 2022.
2. She swore an Affidavit in support of the said application on 27th May 2024. She asserted that the Ruling dated 30th April 2024 and would cause her to suffer substantial loss if the same was executed.
3. She averred that she was currently living on the parcel of land LR No W/Bunyore/Emusire/1053 (hereinafter referred to as the subject land) after her marriage to one Jackson Omale Angaha (now deceased) in 1994. She stated that she had tilled and planted maize and beans on the entire subject land as being a widow, she relied on farming to meet her family's daily expenses inclusive of school fees for her three (3) children namely, OO(form four (4), ODN (college) and Robert OOO(form two (2)).
4. She contended that there was an impending threat of execution by the Respondent which she stated would lead to her losing her source of income if all the maize and beans were cut down. She pointed out that if the said Ruling was to be executed, she would be rendered financially incapacitated and her children's smooth flow of education would be disrupted.



5. She was categorical that the advisory of the County Land Registrar could not override the court's order and that the discrepancies that arose on acreage could only be rectified by court after considering the application for revocation/amendment. She added that without a clear partition on the subject land, there was risk of losing her home as it was not clear how the partitioning would take place.
6. She further averred that the Respondent was well settled on her parcel of land being West/Bunyore/Emusire/1073 and had never used or till the said subject land. She asserted that the Respondent would not be prejudiced in any way if the orders sought herein were granted.
7. The Respondent swore a Replying Affidavit on 20th June 2024 in opposition to the Objector's application. The same was filed on 26th June 2024. She contended that she was not an administrator of the estate herein but a beneficiary of the same. She averred that the Objector was aware that the subject land was surveyed and demarcated as per the surveyor's report that was filed before this court and which the court relied on in coming up with the Ruling dated 30th April 2024.
8. She was emphatic that the said Ruling was not made in abstract but based on the findings of the Land Registrar facts whereof were well within the Objector's knowledge. She stated that the Objector's deceased husband did not oppose her entitlement to a section of the suit land either before his death and throughout the proceedings herein.
9. It was her case that since the Objector's husband died, the Objector had never taken out a grant of letters of administration intestate to administer the estate and that her continued interference in both estates amounted to intermeddling which was illegal. She asserted that by filing this application instead of fixing the application dated 28th October 2022 for hearing, the Objector was wasting time in order to continue using the suit land at her expense.
10. She pointed out that the Objector had no intention of respecting court orders including the one that ordered the status quo which was that each party knew their positions as clearly marked by the surveyor pursuant to the order of this court. She added that she had a Medical Clinic and borehole on the said subject land, a fact that the Objector did not want to acknowledge yet it was existent in the public domain.
11. She further contended that unlike the Objector, she had obtained a Grant of Letters of Administration Intestate to the estate of her late husband and hence her inclusion in the matter herein and that without the said letters of administration, the Objector was a stranger in these proceedings which was why she had not attacked any of the administrators of the estate herein.
12. She stated that it was an abuse of the process of the court for the Objector to continue filing applications without prosecuting them timeously. She argued that by acknowledging that she had planted maize and beans on the subject land, the Objector had admitted that she was indeed in violation of the order of the court and the surveyor's report.
13. She further stated that as at 4th November 2022, when the court ordered the status quo the surveyor had already demarcated the land, beacons fixed and a report filed in court which the Objector had not challenged and had also not challenged the mode of distribution by the administrators of the estate herein.
14. She asserted that the Objector was using the court to continue blocking the entrance to her clinic which she had planted nappier grass around and had attempted to vandalise in an attempt to destroy evidence of usage. She pointed out that the Objector had had run-ins with the villagers who she had been blocking from accessing the borehole where they draw water for use in their homes.



15. She further asserted that the Objector approached her for help during the delivery of her last-born child and she assisted her in her clinic located in the subject land thus she should be estopped from alleging otherwise. She was categorical that the local administration was involved in fraudulent transfer of the subject land to the Objector's husband which was later recalled by the Land Registrar and cancelled. She was emphatic that the Land Registrar cancelled the title obtained by the Objector's husband without a grant of letters of administration intestate as proof of fraudulent acquisition of the subject land herein.
16. The Objector's Written Submissions were dated 6th July 2024 and filed on 9th July 2024 while those of the Respondent were dated 23rd July 2024 and filed on 24th July 2024. This Ruling is based on the said Written Submissions which both parties relied upon in their entirety.

Legal Analysis

17. The Objector invoked Order 45(1) of the Civil Procedure Rules and submitted that the Chief's letter dated 17th June 2015 was proof that she had been in occupation of the subject land for over forty (40) years. She contended that she was not able to produce the said letter before the court order was made because she had lost her copy of the same.
18. She pleaded with this court to maintain the status quo that prevailed as at 4th November 2022. She asserted that an order maintaining status quo was meant to preserve the existing state of affairs and hence the status quo must had to be interpreted with respect to existing factual scenario.
19. In that regard, she placed reliance on the case of Kenya Airline Pilots Association vs Co-operative Bank of Kenya Limited & Another [2020]eKLR where it was held that by maintaining the status quo, the court strived to ensure that the substratum of the subject matter of the dispute was preserved before it could be eroded or radically because if the status quo ante could not be restored, it would render the proceedings nugatory and negatively prejudice one party.
20. She was emphatic that demarcation did not take place on 3rd November 2022 as it was clear after survey of the subject land that the actual acreage on the ground was less than the acreage that was on the Certificate of Confirmation of Grant. She took the view that the Surveyors could not therefore proceed with demarcation as he could not purport to amend the Certificate of Confirmation of Grant because any discrepancies in such Certificate of Confirmation of Grant could only be amended by a court order.
21. She was emphatic that the Certificate of Confirmation of Grant that was issued on 6th September 2019 could not be implemented and had to be revoked and a new one issued before the Surveyor could proceed with the demarcation. She urged the court to grant the prayers sought in her application.
22. On her part, the Respondent reiterated her averments in her Replying Affidavit and submitted that Musyoka J then sitting in Kakamega issued an order directing that the status quo as at 4th November 2022 be maintained. She asserted that as at the said time, the Surveyor had already demarcated the land into two (2) portions and filed his Report in court. She argued that the Objector was feigning ignorance of the said Report yet she participated in the proceedings on the day of demarcation. She added that as the Objector had not sought to challenge those findings, they bound both of them.
23. She pointed out that there was an order directing that the Objector sets down for hearing her application for revocation of grant but she chose to sit on it and in the process delayed the cause of justice. She was categorical that she had annexed as proof the letter dated 10th February 2015 and the Green Card both of which showed the extent to which the Objector's husband had perpetuated fraud as he knew that he could only acquire the land through fraud.



24. She argued that the Objector ploughed the entire parcel of land against the order of the court that directed that status quo be maintained which was that each party knew their portions as per the Surveyor's report which she termed as the property of the court.
25. She further contended that the court record showed that the removal of the beacons was a subject of contempt proceedings before this court and that the matter was then reported at Mwichio Police Post. She asserted that as the Objector was denying an established fact, the only inference this court could make was that she was the one who removed the beacons.
26. She further argued that the documents that the Objector annexed as proof of her school going children were not up to date and could not be relied upon as gospel truth. She added that peasant farming could not be said to be the only source of income for any family as alleged by the Objector.
27. She further submitted that the Assistant Chief was the one creating confusion in the family herein as through her letter dated 17th June 2015, she indicated that the Objector had been staying on the subject land for over forty (40) years. She argued that as the Objector was forty-eight (48) years old that meant that she got married when she was eight (8) years old which was not logical. She urged the court to summon the Assistant Chief to appear before court to explain her interest in the subject land and to find the Objector untrustworthy and punish her for perjury and dismiss her application with costs.
28. Right at the outset, this court considered if the Objector's present application was filed without unreasonable delay to determine if it could entertain its merits. Notably, the Ruling which she sought to review was issued on 30th April 2024. She filed her present dated 27th May 2024 on even date. A period of less than one (1) month could not be said to be unreasonable delay. This court therefore found it could entertain it and consider its merits or otherwise.
29. The review of decisions of a Probate court is governed by Rule 63 of the Probate and Administration Rules, which provides as follows:-

“Application of Civil Procedure Rules and High Court (Practice and Procedure) Rules

- (1) Save as is in the Act or in these Rules otherwise provided, and subject to any order of the court or a registrar in any particular case for reasons to be recorded, the following provisions of the Civil Procedure Rules, namely Orders V, X, XI, XV, XVIII, XXV, XLIV and XLIX (Cap. 21, Sub. Leg.), together with the High Court (Practice and Procedure) Rules (Cap. 8, Sub. Leg.), shall apply so far as relevant to proceedings under these Rules.”
30. In *John Mundia Njoroge & 9 Others vs Cecilia Muthoni Njoroge & Another* [2016] eKLR, the court cited Rule 63 of the Probate and Administration Rules, and then stated that Order 45 of the Civil Procedure Rules, 2010 was imported into succession practice by Rule 63 of the Probate and Administration Rules.
31. Any party who was seeking review of orders, in a probate and succession matter, was therefore bound by the provisions of Order 45 of the Civil Procedure Rules which states as follows:

“ 1.

- (1) Any person considering himself aggrieved—



- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
- (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.”

32. The said Order 45 of the Civil Procedure Rules provides for three (3) instances when an order for review could be sought. To be successful, the applicant was required to demonstrate that there had been discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed. Secondly, the applicant was required to demonstrate that there has been some mistake or error apparent on the face of the record. The third ground for review was worded broadly. In this regard, an applicant could demonstrate any other sufficient reason.
33. The first ground was discovery of new and important matter of evidence. In her submissions, the Objector contended that she had lived and cultivated the subject land for more than forty (40) years, a fact that was confirmed by the Assistant Chief’s Letter dated 17th June 2015 which she alleged she could not produce the same before the court made its order of 30th April 2024 as she had replaced her copy at the time when she was responding to the application dated 29th September 2023.
34. A reading of the said Ruling of 30th April 2024 showed that this court after analysing the affidavit evidence of both the Objector and the Respondent rendered itself on the issue on who was in occupation of the subject land as follows:-

“ 34.In the absence of oral evidence, it was difficult for this court to state with certainty who was actually in occupation of the entire subject property as at the time Musyoka J issued his order on 4th November 2022....

37. Having said so, the status as at 4th November 2022 was that the demarcation and survey exercise that was to be supervised by the Officer Commanding Station (OCS) Luanda Police Station as per the orders of Musyoka J of 20th January 2021 had been carried out the previous day, 3rd November 2022.....

41. The situation as it existed on 4th November 2022 meant that the Applicant was entitled to her portion as per the said Certificate of Confirmation of Grant dated 6th September 2019 and the Respondent could not therefore purport to till, plough, plant, work or in any other way interfere with the portion that had been allocated to the Applicant herein.”



35. In the mind of this court, it was immaterial whether or not the Objector proved that she was actually in possession of the subject land and had lived and cultivated the same for years as the court had deciphered the status quo of the said subject land as at 4th November 2022. This court noted that in her submissions, the Objector admitted that the status quo that was to be maintained was that of 4th November 2022.
36. The Grant of Letters of Administration Intestate that was issued on 30th January 2017 had not been revoked. The Certificate of Confirmation of Grant dated 6th September 2019 and confirmed on 29th May 2020 had not been amended, reviewed and/or set aside. This meant that the portion allocated the Respondent herein was still intact.
37. The Objector could not therefore purport to till, plough, plant, work or in any other way interfere with the said portion, a position that was well settled in the said Ruling of 30th April 2024 in respect of the Respondent's Notice of Motion application dated 29th September 2023 and filed on 2nd October 2023. Indeed, this court rendered itself as follows:-

“For the foregoing reasons, the upshot of this court's decisions was that the Applicant's Notice of Motion application 29th September 2023 and filed on 2nd October 2023 was merited and the same be and is hereby allowed in terms of Prayer No 3 therein but limited to the portion of 0.65 acres as per the Report of the Surveyor dated 8th November 2022.”
38. As the grounds for review were disjunctive and not conjunctive, the Objector could also demonstrate a mistake or error apparent on the face of the record. The error was not to be matter of argument, an allegation that required to be proved or to be implied. The error had to be obvious on the face of the record.
39. From the record, it was not challenged that a Survey was carried out on the subject land and a Report dated 8th November 2022 done by the County Lands Surveyor. Although the Objector argued that no demarcation was done on 3rd November 2022, the said Report indicated that she was present during the said survey. It was immaterial that the actual acreage on ground was less than the acreage on the Certificate of Confirmation of Grant as she claimed as that could be handled by an application for rectification of the Grant herein by either of the parties. Indeed, in its order of 30th April 2024, this court was just enough to refer to the actual acreage on the ground.
40. The Objector did not demonstrate that there was any mistake or error apparent on the court record. It therefore followed that she had not shown sufficient reason to warrant a review of the Ruling of 30th April 2024.
41. The Objector did not also demonstrate that there was sufficient reason for this court to review its orders which was the third ground for review.
42. This court took the firm view that the Objector did not demonstrate any of the grounds for review under Order 45 of the Civil Procedure Rules. In that regard, the prayers for setting aside and/or review had to fail.
43. It was important to point out that on an oral application by both the Objector and the Respondent herein, this court visited the site subject of the subject land herein on 3rd December 2024. Both parties, their advocates, Surveyor, Assistant Chief and Chief of the area alongside several elders and neighbours in the area were in attendance. This court deemed it prudent to visit the site as opposed to awaiting the hearing of the present application in which the Objector had sought the order so as to maintain



peace among the parties herein as the situation was very volatile. Prayer No (3) of the Objector's present application was therefore spent.

44. Having said so, in its order of 16th December 2024, this court directed that the Objector clears the maize until where she had planted it. This was to maintain peace as a visit to the site showed that it was surrounding a clinic that the Respondent operated and it was likely to cause tension and more strife between the two (2) families which was very evident during the said site visit. There was need to maintain that status as the parties ventilated the Objector's Summons for Revocation and/or Annulment of Grant that was dated 28th October 2022 and filed on 1st November 2022.
45. Indeed, courts must exercise great caution not to deny litigants their right to fair trial. Indeed, every party has a right to access any court or tribunal to have its dispute heard and determined in accordance with Article 50(1) of *the Constitution* of Kenya, 2010.

Disposition

46. For the foregoing reasons, the upshot of this court's decision was that the Objector's Notice of Motion application dated 27th May 2024 was partly merited in terms of Prayer No (5) only. Prayer No (3) be and is hereby dismissed.
47. It is hereby directed that the Objector's Summons for Revocation/Annulment of Grant dated 28th October 2022 and filed on 1st November 2022 be listed for directions on 23rd June 2025.
48. In the meantime, the orders that were issued on 16th December 2024 will subsist pending the hearing and determination of the said Objector's Summons for Revocation/Annulment of Grant dated 28th October 2022 and filed on 1st November 2022 and/or until further orders of this court.
49. As this was a family matter and not further escalate the dispute between the families, this court found it prudent to deviate from the general principle that costs follow the events. Consequently, each party will bear its own costs of this application.
50. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 25TH DAY OF FEBRUARY 2025

J. KAMAU

JUDGE

