



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Ruth Njoki Thogo (Deceased) (Succession Cause
33 of 1995) [2024] KEHC 11989 (KLR) (26 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11989 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE 33 OF 1995
DKN MAGARE, J
SEPTEMBER 26, 2024
IN THE MATTER OF THE ESTATE OF RUTH NJOKI THOGO (DECEASED)**

BETWEEN

JAMES KARIUKI MAINA APPLICANT

AND

PAUL KURIA KARIUKI RESPONDENT

RULING

1. This Ruling is in respect of the application dated 19/5/2023 and filed by the Applicant.
2. The application seeks for the following relief:
 - a. The Honourable court be pleased to issue injunctive orders against the Administrator, Paul Kuria Kariuki from selling or in any manner transferring 1.5 acres to Peter Mburu Wanduma out of 4.5 acres being the share that the Applicant is entitled to out of the estate of the deceased.
 - b. The costs be in the cause.
3. The application is supported by the affidavit of the Applicant sworn on 22/5/2022 premised on the following grounds:
 - a. The Applicant was entitled to 4.5 acres vide the rectified grant dated 25/5/2022.
 - b. The Applicant established that 1.5 acres had been hived out of the said 4.5 acres ostensibly for sale to one Peter Mburu Wanduma, also a beneficiary.
4. The Respondent filed a replying affidavit dated 1/8/2023 as follows:
 - a. The estate of Elijah Maina Kariuki was entitled to 9 acres shared as 4.5 acres to each of his two houses.



- b. The Applicant produced no evidence to show any threat or violation of the shares in the manner pleaded.
 - c. The Applicant's fear is unfounded.
5. The Applicant also filed a further affidavit dated 22/1/2024 in which it was deposed that land has never been sold to Peter Mburu Wanduma who remains an intermeddler.

Submissions

6. The Applicant filed submissions on 22/1/2024. It was submitted that the Applicant had satisfied the conditions for the grant of an injunction. Reliance was placed on *Giella v Cassman Brown* (1973) EA 348 to submit that the Applicant had demonstrated irreparable loss, a *prima facie* case and the balance of convenience would be in his favour.
7. I have not had sight of the Respondent's submissions.

Analysis

8. The issue before me for determination is whether the Applicant has satisfied the conditions for obtaining an injunction as prayed in the application.
9. The law on injunctions is stipulated as follows under Order 40 Rule 1 of the [Civil Procedure Rules](#):
Cases in which temporary injunction may be granted:-
“Where in any suit it is proved by affidavit or otherwise—
- (a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
 - (b) that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the Plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.”
10. The grant of injunction is usually pending determination of certain matters. All matters in this case have been determined. The shares of parties were determined, being 4.5 acres vide the rectified grant dated 25/5/2022.
11. The only question remaining is the issuance of titles. There was no question of continuing trust that resulted. This means that the rights to land have crystallised. The properties are no longer estate property. Under section 83 the [Law of Succession Act](#) provides for duties of an administrator as follows: -
Personal representatives shall have the following duties-
- (a) to provide and pay, out of the estate of the deceased, the expenses of a reasonable funeral for him;
 - (b) to get in all free property of the deceased, including debts owing to him and moneys payable to his personal representatives by reason of his death;



- (c) to pay, out of the estate of the deceased, all expenses of obtaining their grant of representation, and all other reasonable expenses of administration (including estate duty, if any);
 - (d) to ascertain and pay, out of the estate of the deceased, all his debts;
 - (e) within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
 - (f) subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be;
 - (g) within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration.
 - (h) to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
 - (i) to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration.
12. The estate should not have been alive up to date. It should have been administered as per the grant. Assuming for argument purposes, that it is true that the administrator was selling a portion belonging to the Applicant, that cannot be a succession dispute. The succession dispute has been resolved. Parties are entitled to their portions, which must have been settled vide the certification of confirmation of a subsequent rectified certificate of confirmation of grant.
13. There has been no known right that has been infringed. Parties must learn to conclude succession. The confirmed grant as rectified ought to be enforced and titles released. Once that is done, any trespasser will be dealt with as per Article 162(2)(b) of the Constitution, which provides as doth: -
- “(2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—
 - (a)
 - (b) the environment and the use and occupation of, and title to, land.”
14. Parliament was faithful to this process and established a court under the Environment and Land Court Act. That Act deals with the following under Section 13[2] :-
- (2) In exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes-



- a. relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
 - b. relating to compulsory acquisition of land;
 - c. relating to land administration and management;
 - d. relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
 - e. any other dispute relating to environment and land.
15. The dispute herein relates to title to land. The court completed its function as a succession court. Parties have failed to transfer titles to themselves or have they? The Administrator was of the view that there is no sale. The Applicant was of a contrary view. In the circumstances, there is no dispute capable of determination herein.
16. An injunction is a civil remedy capable of being used while there is something remaining undetermined. In this case the estate is fully distributed. The succession court has no place in post succession disputes that have nothing to do with sharing of the property.
17. Without a dispute, it is unnecessary to go into principles for issuance of injunction. Therefore, there is nothing pending for an injunction to be necessary. The application is consequently not merited and is accordingly dismissed with costs/disbursements of Ksh. 10,000/= payable within 30 days in default execution do issue.

Determination

18. In the upshot, I make the following orders:
- a. The application dated 19/5/2023 is not merited and is hereby dismissed with costs/disbursements of Ksh. 10,000/=.
 - b. The file is closed.
 - c. The administrator to file a certificate/affidavit confirming conclusion of the estate by 21/12/2024.

DELIVERED, DATED AND SIGNED AT NYERI ON THIS 26TH DAY OF SEPTEMBER, 2024.

JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.

KIZITO MAGARE

JUDGE

Represented by: -

No appearance for the Applicant

Mrs. Maina for the Respondent

Court Assistant – Jedidah

