



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**

**FAMILY DIVISION**  
**SUCCESSION CAUSE NO. 225 OF 1985**

**IN THE MATTER OF THE ESTATE OF PATRICK ROKI WANYEE (DECEASED)**

PETER KAMAU NJUI.....1<sup>ST</sup> APPLICANT  
STEPHEN KAMAU NJUGUNA.....2<sup>ND</sup> APPLICANT

VERSUS

SHARON LOUISE WANYEE.....1<sup>ST</sup> RESPONDENT  
BOAZ REUBEN SHUMA.....2<sup>ND</sup> RESPONDENT

RULING

1. The deceased Patrick Roki Wanyee died intestate on 6<sup>th</sup> February 1984. His widow Sharon Louise Wanyee (the 1<sup>st</sup> respondent) and one Boaz Reuben Shuma (2<sup>nd</sup> respondent) petitioned this court for the grant of letters of administration intestate. The grant was issued on 27<sup>th</sup> May 1985. An application dated 18<sup>th</sup> March 1986 sought the confirmation of the grant. Subsequently, the application was heard, the grant confirmed and the estate distributed to the deceased's family.
2. One of the properties of the deceased was Dagoretti/Riruta/63 measuring 20.6 acres. The 1<sup>st</sup> respondent got a life interest over the parcel, subsequent to which it was to be shared by the deceased's children Stephen Wanyee Roki, Stephen Kinuthia Wanyee, Patricia Nyambura Wanyee and Cathy Wanyee equally. The parcel has since been subdivided into Dagoretti/Riruta/4604, 4607 and 4620.
3. There is a pending application dated 7<sup>th</sup> September 2021 by the applicants Peter Kamau Njui and Stephen Kamau Njuguna who sought, under **sections 38, 40, 47 and 76 of the Law of Succession Act (Cap. 160)**, that the grant issued and confirmed to the respondents be revoked. The applicants are the grandsons of the late Stephano Wanyee and Teresia Nyambura Wanyee. Stephano and Teresia had seven children and each had a family. The deceased was one of the seven children. The other children included Scholastica Waweru Wanyee (the mother of the 1<sup>st</sup> applicant) and Martha Njeri Wanyee (the mother of the 2<sup>nd</sup> applicant). The applicants stated that Dagoretti/Riruta/63 belonged to their grandfather and was registered in the name of the deceased to hold it in trust for his siblings, and that this is what the respondents deliberately failed to inform the court when they got the parcel to be inherited by the deceased's family to the exclusion of the larger family of Stephano Wanyee. They stated that they were not involved in the petition and confirmation of the grant issued to the respondents. They have always lived on this parcel of land and have not only been disinherited but are now facing an eviction by the respondents.
4. The present application was dated 1<sup>st</sup> October 2021 by the applicants. They sought that the eviction notice dated 30<sup>th</sup> June 2021 served on them by the respondents be stayed and an interim injunction does issue against the respondents and those acting under them to restrain them from evicting them or disposing of the property by lease or otherwise until the revocation application had been heard and determined. The application was brought under **section 47 of the Act** and **rule 73 of the Probate and Administration Rules**. The application for revocation was dated 7<sup>th</sup> September 2021. It was opposed. It is pending hearing.
5. The response by the respondents was that they were the registered proprietors of the parcel(s) who had rights under **Article 40** of the Constitution, and which rights could not be interfered with by the applicants who were trespassers. The other provisions cited in response to the application were **sections 24 and 26 of the Land Registration Act** which basically stated that the rights of a registered proprietor of a parcel of land are absolute and indefeasible. They denied that the deceased held the parcel of land in trust for other persons.
6. **Section 47 of the Act** provides as follows:

**“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient:**

**Provided that the High Court may for the purpose of this section be represented by Resident Magistrates appointed by the Chief Justice.”**

**Rule 73 of the Probate and Administration Rules** provides that:-

**“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”**

7. Ordinarily, in an application seeking an interlocutory injunction, the applicant has to demonstrate that he has a *prima facie* case with a probability of success; that he will suffer irreparable loss if the injunction is not granted; and that, if there is doubt, the application be decided on the balance of convenience (**Giella –v- Cassman Borwn & Co. Ltd [1973] EA 358**). Whereas that is the position, this court has to consider that this is a succession cause. Under **section 76** of the **Act**, a grant, whether or not confirmed, can be revoked and/or annulled if any of the grounds under the **section** has been demonstrated. It means that an estate that has been distributed can be recalled for re distribution, for instance.

8. In the instant case, the applicants allege that they were entitled to benefit from the parcel Dagoretti/Riruta/63 which the deceased was registered to hold in trust for their late mothers, among other people. They state that they were born and brought up on this land, and that they were not involved in the succession proceedings to be able to lay their claim to the parcel. They are saying that, under those circumstances, the eviction be stayed and the respondents be restrained from, among other things, leasing out the parcel. The respondents, on their part, content that they have title to the parcel which cannot be impeached; that the applicants have become trespassers who have to be evicted.

9. I accept that, normally, the court should not injunct a registered owner of a parcel of land. However, at this stage, the court cannot estimate the changes that the applicant will have when the application for revocation is finally heard and determined. But it is clear that the applicants have always been on this land and the succession proceedings did not involve them. If the application is not allowed, the respondents will be at liberty to deal with the parcel in whatever manner including disposing of it. It means that by the time the application for revocation is heard the subject matter will have dissipated. If the application for revocation succeeds, the applicants will have nothing to inherit. These are the reasons why I determine that it would be expedient to preserve the subject matter to wait for the hearing and determination of the application for revocation.

10. That being the case, I allow the application and grant an interlocutory order restraining the respondents and all those acting under them from evicting the applicants and/or selling, leasing or discharging the land parcel Dagoretti/Riruta/63 and its subdivisions Dagoretti/Riruta/4604, 4607 and 4620 until the application dated 7<sup>th</sup> September 2021 is heard and determined, or until the court orders otherwise.

11. Given the facts of this family dispute, I make no orders as to costs.

**DATED AND DELIVERED AT NAIROBI THIS 22ND DAY OF FEBRUARY 2022.**

**A.O. MUCHELULE**

**JUDGE**