In re Estate of David Waiganjo Koinange (Deceased) (Succession Cause 957 of 2020) [2022] KEHC 3105 (KLR) (Family) (24 June 2022) (Ruling)

Neutral citation: [2022] KEHC 3105 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

SUCCESSION CAUSE 957 OF 2020

MA ODERO, J

JUNE 24, 2022

BETWEEN

CHRISTINE NJOKI THIONGO ..... 1ST OBJECTOR

RITAH NDUKU ..... 2ND OBJECTOR

SOPHIA MUKAI BINGA (ON BEHALF OF LENA WANJIKU) .... 3RD OBJECTOR

AND

NANCY WAIRIMU WAIGANJO ..... 1ST ADMINISTRATOR

YVONNE WANJIKU WAIGANJO ..... 2ND ADMINISTRATOR

RULING

1. Before this Court for determination are two applications as follows:-

   (1) Notice of Motion dated 15th November 2021 by which the Applicants Nancy Wairimu Waiganjo and Yvonne Wanjiku Waiganjo seek the following orders:-

   " 1. Spent.

   2. Spent.

   3. That the Honourable court be pleased to issue ordersfor the preservation of the estate of David Waiganjo Koinange (Deceased) making it illegal to destroy or change all or any part of the estate of the Deceased.

   4. Spent

5. That the Honourable Court be pleased to restore the power, authority and/or validity of the Grant issued to the Applicant/Administrators on 3rd January 2021.

6. That this Court grants such other or further relief as it may deem fit and necessary in the circumstances; and

7. That costs be in the cause."

2. The application was premised upon section 80 of the *Civil Procedure Act*, order 45 Rule 1 & order 51 of the *Civil Procedure Rules*. Sections 39, 45 and 47 of the *Succession Act*, and Rules 49 and 73 of the Probate and Administration Rules, Articles 159 of *the Constitution of Kenya* (2010) as well as all other enabling provisions of the law and was supported by the Affidavit of even date sworn by the 1st Applicant Nancy Wairimu Waiganjo.

3. The 1st Objector/Respondent Rita Nduku Waiganjo opposed the Application by way of the Replying Affidavit dated 4th March 2022.

(2) Ex parte summons dated 11th February 2022 by which the Ex parte Applicant Michael Kinyanjui Kahiga seeks for orders-

"1. Spent

2. Thatthis Honorable court be pleased to enjoin the Applicant, Michael Kinyanjui Kahigaas an Interested Party in this Cause.

3. That this Honourable Court be pleased to grant interim injunctive orders against the administrators or persons claiming under them from transferring, distributing or in any way interfering with the beneficial interest in the Estate of the late David Waiganjo Koinangeover the parcel of land known as L.R. No. 22/2/6-10 also known as Closeburn Estate, pending the hearing and determination of this Application.

4. That this Honourable Court be pleased to issue any further orders and/or give directions as shall be deemed just and fair to prevent alienation, disposition, destruction and wastage on proposed subdivision Land Reference Number 22/364 pending the final determination of this Application.

5. That costs be in the cause."

4. The application was premised upon Article 40(1) of *the Constitution of Kenya*, 2010, Section 47 of the *Law of Succession Act*, Cap 160, Laws of Kenya, Rules 49, 59 (1) (2) (3) and 5, Rule 60 and Rule 73 of the *Probate and Administration Rules* 1980 (Rev 2012) and all other enabling provisions of the law and was supported by the Affidavit of even date sworn by the Applicant.

5. The application was opposed by the 1st Applicant Nancy Wairimu Waiganjo who filed a Replying Affidavit dated 18th March 2022. The 1st Objector Rita Nduku Waiganjo filed Grounds of Opposition

dated 25th March 2022 which opposed the application dated 11th February 2022 on the following grounds:-

> " 1. That the said application amounts to sub-judice as the intended Interested Party also filed the same application in Succession Cause No. 527 of 1981 and the same is scheduled for Ruling on the 30th day of March 2022.
>
> 2. That the applicant herein is forum shopping and there are high risk that the court might issue two conflicting decisions.
>
> 3. That the Applicant herein is premature as this Honourable Court is still determining who are the Administrators in the estate and therefore, the intended interested party should have waited for the distribution."

6. The court directed that the two applications would be heard together and were to be canvassed by way of written submissions. The parties despite being aware of the courts directions failed to file submissions save for the Ex parte Applicant who filed the written submissions dated 19th April 2022.

Background

7. This Succession Cause relates to the estate of David Waiganjo Koinange(hereinafter 'the Deceased') who died intestate on 10th September 2020. A copy of the Death Certificate Serial Number 0952600 is in the court file. According to a letter dated 7th October 2020 from the Assistant Chief, Rwaka Sub-location the Deceased was survived by the following persons:-

   (1) Nancy Wairimu Waiganjo – widow

   (2) Damaris Wambui Waiganjo – Daughter

   (3) Yvonne Wanjiku Waiganjo – Daughter

   (4) Yvette Kaibura Waiganjo – Daughter

   (5) Nathan Mugwe – Grandson

   (6) Shanice Wairimu – Granddaughter

   (7) Hotani Waiganjo - Grandson

   (8) Sia Wairimu – Granddaughter

8. On 3rd January 2021 Grant of letters of Administration Intestate was made to Nancy Wairimu Waignajo (widow) and Yvonne Wanjiku Waiganjo (Daughter) of the Deceased.

(i) Notice of Motion dated 15th November 2021

9. There has been much back and forth in this matter with several parties coming in as objectors seeking revocation of the Grant issued to the two Petitioners. Hearing of the Summons for Revocation of Grant dated 1st February 2021 commenced by way of *viva voce* evidence before this court on 2nd June 2021

10. During the course of that hearing on 10th November 2021 Mr Okach Advocate acting for the 1st Objector informed the court that the petitioners had during the hearing in September 2021 gone to NTSA and effected transfer of four (4) motor vehicles from the name of the Deceased to the names of the Petitioners. The 1st Petitioner confirmed that said transfers had in fact been effected.

11. The court then acting '*suo moto*' suspended the letters of Administration which had been issued to the Petitioners and directed that the same be returned to the court.

12. The Petitioners then filed this application seeking presevertory orders in respect of the estate of the Deceased and seeking that the court restore the validity of the Grant of letters of Administration which had been issued to the petitioners on 3rd January 2021. They allege that the courts suspension of the Grant was based on falsehood and outright misrepresentation. That the objectors who are neither widows nor children of the deceased have been squandering funds held in the Deceased bank accounts.

13. The 1st Petitioner averred that as an Administrator, she has an obligation to ascertain and complete the Administration of the estate. That if the suspended Grant is restored the Petitioners will be in a better positon to prevent the objectors from intermeddling and/or wasting the estate. The Petitioners stated that they have not in any way abused, misused and/or breached the authority of the Grant. They urged that the present application be allowed in the interest of justice.

14. The 1st Objector/Respondent Rita Nduku Waiganjo who also claims to be a widow of the Deceased opposed the application dated 15th November 2021. She alleged that notwithstanding the courts suspension of the letters of Administration, the petitioners have continued to clandestinely misrepresent themselves as the Administrators of the estate of the Deceased. That the Petitioners even went ahead to enter into a five (5) year lease Agreement with a company known as Flower Quest Limited.

15. The 1st Objector averred that the Petitioners actions clearly show that they do not respect the fact that the letters of Administration issued to them are subject to challenge in the courts and that the same have been suspended. She is apprehensive that if the validity of said letters of Administration is restored then the petitioners will continue misuse and abuse the same making a mockery of the court process. They urge the court to dismiss the application in its entirety.

Analysis and Determination

16. I have carefully considered the application dated 15th November 2021, as well as the Affidavit filed in Reply. The Petitioners/Applicants are in effect asking that this court review the orders made on 10th November 2021 suspending the validity of the Grant of Letters of Administration issued to the Petitioners on 3rd January 2021.

17. Order 45 Rule 1 of the *Civil Procedure Rules* 2010 provide for the circumstances under which an order/ Decree issued by the court may be reviewed as follows: -

> "(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."

18. Therefore in order to merit a review of the order in question it must be shown either that there exists an error apparent on the face of the record, or that there has been discovery of new and important evidence which was not within the knowledge of the parties at the time the order is made or that for some other satisfactory reason the order ought to be reviewed.

19. There has been no demonstration by the Petitioners of the discovery of any new and important evidence that would warrant a review of the courts orders.

20. The Petitioners have alleged that the court was misled into making the orders suspending the Grant due to misrepresentation and falsehoods presented by the Objectors. Thus they are alleging that the orders were made in error. In the case of *Republic vs Advocates Disciplinary Tribunal Ex Parte Apollo Mboya* [2019] eKLR the Court stated as follows:-

> " The term "mistake or error apparent" by its very connotation signifies an error which is evidence per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 45 Rule 1 of the *Civil Procedure Rules* and Section 80 of the Act. To put it differently an order, decision, or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision." (own emphasis).

21. The record of the proceedings leading up to the suspension of the Grant (proceedings of 10th November 2021) clearly indicate that on that date which had been scheduled for hearing Mr Nyakieriga Advocate for the Petitioners was not in court. The 1st Objector sought an adjournment on the basis that her Advocate was bereaved and could not attend court.

22. Mr Okach Advocate for the 1st Objector opposed the Application for an adjournment. In doing so he revealed that the Petitioners had during the pendency of the hearing had gone to NTSA and transferred four (4) vehicles from the name of the Deceased to themselves. He alleged that the request for an adjournment was being made merely to allow the Petitioners more time to further intermeddle in the estate to the detriment of the objectors. Counsel asked court to suspend the letters of Administration issued to the Petitioners

23. The other Advocates on record also opposed the prayers for adjournment and stated that the current Administrators had been misusing the letters of Administration issued to them.

24. Upon being questioned by the court the 1st Petitioner Nancy Wairimu admitted that it was true the vehicles had been transferred into her name.

25. Therefore there cannot be said to have been any misrepresentation or falsehood by the Objectors. The 1st Petitioner admitted that she had transferred the vehicles into her name. As such in light of this admission there cannot be said to have been an error on the face of the record. These transfers were done in September 2021 after the hearing of the summons for revocation of Grant had commenced. Not only were the Petitioners fully aware that there was a challenge to the Grant that had been issued to them but they were also fully aware and had actively participated (through their Advocate) in a hearing before the High Court seeking to have the Grant revoked. With that full knowledge the Petitioners still had the guts to move to transfer estate assets into their own names. This demonstrates a high level of disdain for the legal process in general and authority of the court in particular.

26. There is evidence that on 1st September 2021 the Petitioners entered into a lease Agreement with Flower Quest Limited (See Annexture 'RW3' – to the Replying Affidavit dated 4th March 2022). Again, this lease was entered into by the Petitioners in their capacity as Personal Administrators of the estate of the Deceased relying on the Grant issued to them on 3rd January 2021. This is further evidence of misuse of said Grant.

27. It is manifest that the intention of the Petitioners is to misuse the Grant issued to them to intermeddle with the estate such that by the end of the hearing they would have succeeded in transferring several assets to themselves. They would obviously lead to wastage of the estate and would be detrimental to the other claimants not to mention that such actions would render the ongoing hearing nugatory.

28. Finally, I do agree that unless restrained by this court the Petitioners are likely to continue to misuse and abuse the Grant issued to them by interfering with the estate to their own benefit. In order to protect the sanctity of the court process and in order to secure the beneficial interest of the parties claiming to have a stake in the estate of the Deceased I am of the view that the Grant issued on 3rd January 2021 ought to remain suspended. I therefore decline to review the orders made by this court on 10th November 2021.

29. That being said I have taken note of the allegation made by both parties that the estate is being wasted. I deem it prudent to make orders preserving the estate of the Deceased pending final determination of this summons for Revocation of Grant. Parties are reminded that any dealings with the estate property without the authority of the court amounts to intermeddling which is a serious offence and is punishable by Section 4 of The *Law of Succession Act* which provides that: -

> "(1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall for any purpose take possession or dispose of or otherwise intermeddle with any free property of a deceased person." (own emphasis).

30. The suspension of the Grant now means that the Applicants can no longer represent themselves as Administrators of the estate and that any dealings with the estate by either the Petitioners or the objectors will amount to intermeddling. Accordingly, I do grant prayer (3) seeking preservation of the estate.

31. Prayer 4 seeking orders to restrain the Objectors from representing themselves as wives and/or children of the Deceased is premature and is not worthy of consideration. The question of whether or not the Objectors are the wives and children of the Deceased and the question of whether they are entitled to benefit from the estate are yet to be determined. In the meantime the Objectors are free to represent themselves as Santa Claus if they so wish. The objectors claims are subject to verification in court and counsel for the Petitioners is at liberty to disprove those claims through the court process. Accordingly, I decline to grant the orders sought in Prayer 4.

(ii) Ex Parte summons dated 11th February 2022

32. The Ex Parte Applicant Michael Kinyanjui Kahiga by this application sought interim injunctive orders in respect of the parcel of land known as L.R. No. 22/2/6-10 also known as Closeburn near Two Rivers Estate.

33. The Exparte Applicant in his Supporting Affidavit stated that he met the Deceased in Mombasa sometime in the 1980s. That sometime I the year 2012 the parties entered into discussion about a sale of land by the Deceased to the Exparte Applicant. That again in 2015 the discussion came up and the

Ex parte Applicant agreed to purchase from the Deceased one (1) acre of land adjacent to the home of Deceased in Closeburn Estate.

34. That following a survey the parties entered into a sale Agreement dated 22nd May 2015 for the purchase by the Ex parte Applicant of the proposed subdivision, L.R. No. 22/364 measuring approximately one (1) acre which was to be subdivided from the larger parcel known as L.R. No. 22/2/6-10 Closeburn Estate. Annexed to the Supporting Affidavit dated 11th February 2022 is a copy of the sale Agreement dated 22nd May 2015 (Annexuture 'MKK-2'). The Exparte Applicant averred that the purchase price agreed on was Kshs 26,000,000. He states that he made an initial payment of Kshs 2.0 Million and thereafter continued to make payments by instalments. That between April 2015 to March 2020 the Ex Parte Applicant had paid to the Deceased a total amount of Kshs 23,050,000 in respect of their sale Agreement and that only a balance of Kshs 2,950,000 remains unpaid.

35. The Ex Parte Applicant further averred that in the year 2017 the Deceased allowed him to take up possession of the one (1) acre and as such he began to construct a perimeter wall around the premises which he intended to be his retirement home.

36. The Ex Parte Applicant states that he learnt of the unfortunate demise of the Deceased in September 2020 after he had taken possession of and commenced development of the one (1) acre. The Ex Parte Applicant therefore states he is an innocent purchaser for value. He is apprehensive that this Succession Cause may be heard to his exclusion and detriment as he stands to lose an investment worth more than 26,000,000. The Ex Parte Applicant seeks to be enjoined in this cause as an Interested Party claiming a beneficial interest in the estate of the Deceased David Waiganjo Koinange. He urges the court to allow his application in order to protect his interests in the proposed sub division LR No 22/364 to be carved out of the original Title for Closeburn Estate.

37. The 1st Petitioner Nancy Wairimu Waiganjo and the 1st Protestor Rita Nduku both opposed this application. The 1st petitioner averred that the Ex Parte Applicant has not demonstrated that his enjoinment is key to resolving the dispute in this Succession Cause. She states that the application is fatally defective and urges the court to dismiss the same.

38. The 1st Objector opposes the application on grounds that the same is 'sub judice' as the Ex Parte Applicant had made a similar application in Succession Cause No. 527 of 1981 Estate of Mbiyu Koinange which application was due for Ruling on 30th March 2022.

39. I have considered the Ex Parte Application dated 11th February 2022 the Replies filed thereto as well as the written submissions filed by the Ex parte Applicant.

40. It is not disputed that the Ex parte Applicant is not one of the survivors of the Deceased. He is not related to the Deceased in any way. The interest which the Ex parte Applicant has in the estate of the Deceased is as a 'purchaser'. He claims to have purchased one (1) acre out of Closeburn Estate. The Ex parte Applicant therefore claims to be the 'owner' of this sub-division L.R. No. 22/364 having purchased the same from the Deceased.

41. The question of who as between the Estate of Deceased and the Ex Parte Applicant 'owns' this one (1) acre parcel of land is not one which this court has the jurisdiction to determine. This court is sitting as a Probate Court with the jurisdiction to oversee the distribution of the estate of the Deceased to the genuine heirs and beneficiaries. *In re Estate of G.K.K. (Deceased)* 2017 eKLR it was held that -

> " primary function of a probate court is distribution of the estate of the dead person."

42. The Ex Parte Applicant contends that the suit land does not belong to the estate of the Deceased. Rather he insists that he has a beneficial interest in the land as a Purchaser. Matters relating to the ownership use and occupation of land have now under Article 162 of the *Constitution of Kenya* 2010 been mandated to be determined by a specialized court being the Environment and Land Court ('ELC').

43. Section 13 of the *Environment and Land Court Act* provides for the jurisdiction of that court as follows:-

> 13. Jurisdiction of the Court
>
> (1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of *the Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
>
> (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. [Rev. 2012] No. 19 of 2011 Environment and Land Court 9 [Issue 1]
>
> (3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of *the Constitution*.
>
> (4) In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.
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> (5) Deleted by Act No. 12 of 2012, Sch.
>
> (6) Deleted by Act No. 12 of 2012, Sch.
>
> (7) In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including——
>
> (a) interim or permanent preservation orders including injunctions;
>
> (b) prerogative orders;
>
> (c) award of damages;
>
> (d) compensation;

(e) specific performance;

(g) restitution;

(h) declaration; or

(i) costs.

(Own emphasis)

44. Therefore, the correct and proper forum before which the Ex Parte Applicant ought to ventilate his claim to the suit land is the ELC. The injunctive orders being sought in this application can only be granted by the ELC.

45. *In re Estate of Stone Kathubi Muinde (Deceased)* [2016] eKLR Hon Justice William Musyoka held that:-

> "Such claims to ownership of alleged estate property, as between the estate and a third party, should be resolved through the civil process in a civil suit properly brought before a civil court in accordance with the provisions of the *Civil Procedure Act* and the Civil Procedure Rules. This could mean filing suit at the magistrates' courts, or at the Civil or Commercial Divisions of the High Court, or at the Environment and Land Court. If a decree is obtained in such suit in favour of the claimant then such decree should be presented to the probate court in the succession cause so that that court can give effect to it." (own emphasis)

46. The dispute herein is a dispute relating to ownership of land in question. This court sitting as a Probate Court does not have jurisdiction to determine disputes relating to ownership of land. The Ex Parte Applicant is at liberty to file suit in the ELC where he will have the opportunity to ventilate any claim he alleges to have to the suit land.

47. Moreover it is manifest that the Ex parte Applicant did in fact file a similar Applicant in Succession Cause No. 527 of 1981. I have taken the liberty of perusing the above file. I note that the Ex parte Applicant filed therein an application seeking to be enjoined as an Interested party on the ground that he had purchased one (1) acre of land of the Closeburn Estate from the late David Waiganjo Koinange (the Deceased herein). The Ex parte Applicant claimed to have paid Kshs 23,050,000 under a Sale Agreement dated 2nd May 2015. He claimed to have obtained approval for his plans form the Nairobi City Council, whereupon he proceeded to erect a perimeter wall around the property. The Ex parte Applicant sought to be enjoined in Succession Cause No. 527 of 1981 as an Interested Party to protect his interest in L.R. No. 22/364 the proposed one (1) acre subdivision of L.R. No. 22/2/6-10 Closeburn Estate.

48. From the above it is crystal clear that the Ex parte Applicant made an identical application in Succession Cause No. 527 of 1981. In that matter the Presiding Judge Hon Justice Muchelule delivered a Ruling dated 4th May 2022 dismissing the Ex parte Applicants prayer to be enjoined in the matter.

49. In dismissing the application the Honourable Judge stated as follows: -

> "(6) From the application it is evident that the applicant bought the one acre before the seller David Waiganjo Koinange had obtained confirmed grant. It is trite that a valid sale of a parcel of land belonging to the estate of a deceased person can only be by an administrator or executor who has a confirmed grant and therefore has power to sell under section 82 (b) (ii) of the *Law of Succession Act* (Cap 160). (In Re Estate of Jamin Inyanda Kadambi (Deceased) [2021] eKLR.

If the grant has not been confirmed, the administrator or executor requires the permission of the court to sell the property. Now that David Waiganjo Koinange had a grant which had not been confirmed, and did not have the permission of the court to sell the one acre, he had no capacity to enter into the sale agreement with the applicant. The sale agreement was consequently void ab ignitio, and therefore there is no legal interest that the applicant can seek to protect through this application.

(7) In any case, if he seeks to enforce the sale agreement, the proper forum would be the Environment and Land Court created under section 13 of the *Environment and Land Court Act* and Articles 162 (2) and 165 (5) of *the Constitution*. This court would not have the jurisdiction to hear and determine such dispute.

(8) In conclusion the application is dismissed." (own emphasis).

50. In the light of the above Ruling this matter is now 'Res Judicata'. The doctrine of res judicata is set out under Section 7 of the *Civil Procedure Act*, as follows:-

> " No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court".

51. In *Independent Electoral & Boundaries Commission v Maina Kiai & 5 others* [2017] eKLR; the Court of Appeal stated as follows:-

> " The rule or doctrine of res judicata serves the salutary aim of bringing finality to litigation and affords parties closure and respite from the spectre of being vexed, haunted and hounded by issues and suits that have already been determined by a competent court. It is designed as a pragmatic and common-sensical protection against wastage of time and resources in an endless round of litigation at the behest of intrepid pleaders hoping, by a multiplicity of suits and fora, to obtain at last, outcomes favourable to themselves. Without it, there would be no end to litigation, and the judicial process would be rendered a noisome nuisance and brought to disrepute and calumny. The foundations of res judicata thus rest in the public interest for swift, sure and certain justice". (own emphasis)

52. Therefore party seeking to rely on the doctrine of res judicata to bar a suit from being heard must prove each of the following elements:

a) The suit or issue was directly and substantially in issue in the former suit;

b) The former suit was between the same parties or between the same parties under whom they or any of them claim;

c) The parties were litigating under the same title in the former suit; and

d) The court that formerly herd and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.

53. Undoubtedly, the Application filed in Succession Cause No. 527 of 1981 involved the same parties as in this cause. The dispute revolved around the same parcel of land being L.R. 22/364 a proposed sub-

division of L.R. No. 22/216-10 Closeburn Estate. The court that determined the application filed by the Ex parte Applicant in Succession Cause No. 527 of 1981 was competent to hear and try the matter. This court cannot revisit a decision made by a court of concurrent jurisdiction.

54. The only remedy the Ex parte Applicant has now is to appeal against the Ruling of 4th May 2022. It is mischievous, insincere and amounts to an abuse of process for the Ex parte Applicant to approach this court seeking to be granted orders, which he was denied in Succession Cause No. 527 of 1981. Clearly, the Ex Parte Applicant is engaging in forum shopping.

55. Based on the foregoing I find no merit in the application dated 11th February 2022. The same is hereby dismissed in its entirety. Costs of will be borne by the Ex parte Applicant.

Conclusion

56. Finally in respect of the two applications this court makes the following orders:-

    (i) The Notice of Motion dated 15th November 2021 is partially successful.

    (ii) Prayers (2), (4) and (5) of the Notice of Motion dated 15th November 2021 are dismissed entirely.

    (iii) An order be and is hereby issued restraining any person including the Petitioners and the objectors herein, their agents, servants, employees and/or assigns from interfering distributing, disposing, transferring, or in any other manner whatsoever interfering with the estate of the Deceased pending full determination of the summons for Revocation of Grant dated 1st February 2021 or other orders of the court.

    (iv) Each party shall bear its own costs in respect of the Notice of Motion dated 15th November 2021.

    (v) The Ex parte Application dated 11th February 2022 is dismissed in its entirety.

    (vi) Costs for the Ex Parte Application dated 11th February 2022 shall be borne by the Ex parte Applicant.

DATED IN NAIROBI THIS 24TH DAY OF JUNE, 2022.

MAUREEN A. ODERO

JUDGE