



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 64 OF 2010

IN THE MATTER OF THE ESTATE OF JOSEPHAT MBURU WANYOIKE (DECEASED)

PETER GITAU WANYOIKE.....1ST APPLICANT

ANTHONY WANYOIKE MBURU.....2ND APPLICANT

VERSUS

JOHN BROWN NDUNGU IKENYE.....RESPONDENT

RULING

1. On 10th October 2019 and 6th March 2020 the court found that the respondent John Brown Ndungu Ikenye had intermeddled with the estate of the deceased Josephat Mburu Wanyoike after the grant of letters of administration intestate which had been issued to him on 16th March 2010 had on 10th July 2011 been revoked. He had continued to deal with the estate when he had no grant and without reference to the beneficiaries of the estate, and reference to the applicants Peter Gitau Wanyoike (1st applicant) and Anthony Wanyoike Mburu (2nd applicant) to whom a fresh joint grant had been issued. He was ordered to pay Kshs.113,275,698/= together with costs and interest to the estate of the deceased.

2. In the application dated 24th September 2020 the applicants sought the following orders against the respondent: -

“(a) this application be certified urgent and heard ex-parte in the first instance,

(b) pending hearing and determination of this application, the Honourable Court be pleased to issue an order of injunction to restrain and/or prohibit the judgment-debtor/respondent from travelling out of the country and leaving the court’s jurisdiction, unless he settles the decretal sums herein,

(c) pending hearing and determination of this application/execution, the Honourable Court be pleased to issue a prohibitory order or an inhibition to prohibit the judgment-debtor/respondent from transferring or charging properties LR No. 15064/74, Maki Estate – Thika, LR No. Ngong/Ngong/55861; LR No. Ngong/Ngong/55862; LR No. Ngong/Ngong/55863 and LR No. Nakuru Municipality Block 12/60 in any way, and all persons from taking any benefit from such purported transfer or charge,

(d) the Honourable Court be pleased to order the attachment and sale of LR No. 15064/74, Maki Estate – Thika, LR No. Ngong/Ngong/55861; LR No. Ngong/Ngong/55862; LR No. Ngong/Ngong/55863 and LR No. Nakuru Municipality Block 12/60 in execution of the court’s decree, and

(e) costs of this application be provided for.”

3. The applicants’ case was that since the issuance of the decree the respondent had not paid the amount, he was planning to leave jurisdiction, was disposing or threatening to dispose of his property in order to defeat the execution of the decree, and had deliberately failed to pay the money and made it impossible for them to attach the property.

4. The respondent filed a replying affidavit to say that the application was fatally defective and *res-judicata*; that he was a professor at St.

Paul's University in Kenya and had no intention of permanently leaving Kenya, the only thing being that he occasionally visited the USA to check on his daughter and to access treatment. He denied that he intended to sell his property or to charge it. He stated that the named property, except Nakuru Municipality Block 12/60, had nothing to do with the dispute and could therefore not be attached to satisfy the decree as it was his personal property. He admitted to have bought the Nakuru property using proceeds from the estate, and added that it was worth Kshs.250,000,000/= and he had no problem if it was attached in satisfaction of the decree.

5. On the issue of *res-judicata*, he stated that similar prayers had been made and issued in the ruling dated 11th October 2019.

6. The orders issued on 11th October 2019, and confirmed on 6th March 2020, were that there be a judgment in favour of the applicants against the respondent in the sum of Kshs.113,275,698/= together with costs and interest from the date that the grant was revoked (11th July 2011) until payment in full. There was nothing about the execution of the judgment or the decree that was to follow. Following the decree execution was to commence. There is no dispute that the decree has not been satisfied. To allege that the present application, which is an execution application, is *res judicata* is to miss the point.

7. The properties named in the application all belong to the respondent. One does not know their value. When the respondent states that LR No. Nakuru Municipality Block 12/60 is worth Ksh.250,000,000/=, that is his estimation that is not backed by a valuation.

8. Consequently, a prohibition order shall issue against each of LR No. Nakuru Municipality Block 12/60, LR. No. Ngong/Ngong/55863, LR No. Ngong/Ngong/55862, LR No. Ngong/Ngong/55861 and LR No. 15064/74, Maki Estate – Thika. This is to allow the parties to agree on a common valuer to value the properties and to file a valuation report within 45 days. If within 14 days the parties have not agreed on the valuer, the applicants shall nominate one. The valuation fees shall be paid by the estate, but shall be recovered from the respondent as part of the decree. Costs of this application shall be borne by the respondent.

9. The matter shall be mentioned on 27th April 2021 to indicate what property shall be sold to satisfy the decree.

DATED and DELIVERED NAIROBI this 24TH day of FEBRUARY 2021.

A.O. MUCHELULE

JUDGE