

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 828 OF 1994

IN THE MATTER OF THE ESTATE OF WILFRED THUO NGUGI (DECEASED)

DANIEL GATENJWA THUO.....APPLICANT

VERSUS

MARY KARANJA MBURU.....1ST RESPONDENT

ROSE MUTHONI.....2ND RESPONDENT

EDWARD NGUGI MAKENA.....3RD RESPONDENT

GEORGINA NJERI.....4TH RESPONDENT

RULING

1. This dispute is over land parcel Dagoretti/Uthiru/443 which the court ordered on 20th January 2017 that it be surveyed and subdivided equally among the five children of the deceased Wilfred Thuo Ngugi. The applicant Daniel Gatenjwa Thuo is one of the children of the deceased, and an administrator of the estate of the deceased. He was dissatisfied with the decision of the court and filed an appeal to the Court of Appeal. The appeal is pending. Following application, on 29th January 2019 this court ordered the stay of the execution of the orders of 20th January 2017 pending the hearing and determination of the appeal.

2. On 15th October 2019 the applicant filed an application dated the same day seeking to have the respondents Anthony Karanja Mburu, Rose Muthoni, Edward Ngugi Makena and Georgina Njeri restrained from leasing, letting, building on, developing or blocking him from accessing the parcel of land pending the hearing and determination of the appeal. The respondents are children of the applicant's late sister Grace Wanjiru Thuo. He stated that he has always occupied this land, and constructed rental houses next to his house. The respondents have allegedly invaded the land, taken possession of a large portion of it and put up a permanent building on one portion, rented another portion to some people who were putting up high rise apartments thereon and had blocked him from accessing the parcel.

3. The respondents' case was that their late mother had settled them on this land on which they had put up respective homesteads. Their mother had put up rental houses which had tenants. Instead of the applicant concluding the administration of the deceased, he had extensively developed the land by putting up rental houses.

4. This court distributed the estate of the deceased by among other things, asking that parcel Dagoretti/Uthiru/443 be surveyed and shared equally among the deceased's children. The children include the applicant and the late mother of the respondents. The deceased had five children. The applicant was aggrieved and has appealed to the Court of Appeal. He successfully asked this court to stay the sharing until the Court of Appeal had determined the appeal. I find that, after the order of stay, this court's jurisdiction to further deal with the dispute ended. If the applicant seeks any orders over the estate pending the hearing and determination of the appeal, he has to approach the Court of Appeal which is now seized of the dispute.

5. This dispute now belongs to the Court of Appeal. The applicant cannot be allowed to litigate in both courts at the same time.

6. That being the case, I dismiss the application with costs.

DATED AND DELIVERED AT NAIROBI THIS 25TH DAY OF MARCH 2021.

A.O. MUCHELULE

JUDGE