

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

FAMILY DIVISION
SUCCESSION CAUSE NO. 647 OF 2018

IN THE MATTER OF THE ESTATE OF DICKSON KINARO

KAHORO ALIAS DICKSON KINAO KAHORO (DECEASED)

ABDILLAHI ELMI FARAH.....APPLICANT

VERSUS

JOYCE WANGUI KINARO.....RESPONDENT

RULING

1. The deceased Dickson Kinaro Kahuru alias Dickson Kinao Kahoro died intestate on 21st March 2018. He was survived by his widow Joyce Wangui Kinaro (the respondent) and two sons. The respondent petitioned for the grant of letters of administration intestate. The grant was issued to her on 5th July 2018, and confirmed on 25th February 2019. The entire estate went to her.
2. The estate of the deceased comprised various parcels of land, money in various bank accounts, vehicles and shares in various companies. One of the parcels of land was LR No. 12715/163 (Grant number 44329) measuring 2.351 Hectares situated at Athi River. The application by the applicant Abdillahi Elmi Farah related to this parcel of land. His case was that he was the registered owner of the parcel, and yet the respondent declared it to belong to the deceased and had since inherited it through the certificate of confirmation issued by this court. He stated that he bought the parcel on 4th June 2004 from one Harrison Kahiru Mugo who had bought it from the deceased. He produced a certificate of official search from the Ag. Chief Land Registrar and a copy of the title to evidence his claim to the parcel.
3. When the respondent petitioned for the grant, she produced a copy of the title showing the land had been transferred to the deceased on 8th December 1988.
4. The applicant's application sought the revocation of the grant issued to the respondent. In the meantime, he asked for the inhibition of the title, and a temporary injunction to restrain the respondent and all those acting under her from transferring the parcel until the application was heard and determined.
5. In response to the application, the respondent filed a notice of preliminary objection whose grounds were that the court lacked the jurisdiction to hear and determine the application as it related to ownership of property, a matter that should be handled by the Environment and Land Court under **section 13(2)(a)** of the **Environment and Land Act, No. 19 of 2011**; that the applicant had no *locus standi* to seek the revocation of the grant as he was neither a beneficiary nor a dependant of the deceased; and that the application was an abuse of the process of the court.
6. Under **section 3** of the **Law of Succession Act (Cap. 160)**, a succession court only deals with the free property of a deceased person. It is upon the identification of the beneficiaries that under **section 71** of the **Act** the court will allocate to each beneficiary what is due to him or her from the property.
7. In this case the respondent petitioned for the grant on the basis that the land parcel in question belonged to the deceased, and produced title. The applicant, on his side, stated that he was the registered owner of the parcel; that the parcel ought not to have been the subject of the succession case. To be able to determine whether the property belonged to the deceased or to the applicant, a court will have to interrogate the title documents presented here, and may go into the history of those titles. Certainly, the court with the jurisdiction to hear and determine the dispute is the Environment and Land Court set up under **Article 162(2)(b)** of the Constitution and **section 13(2)(a)** of the **Environment and Land Court Act**.
8. However, to allow the applicant to approach the appropriate court while making sure that the subject matter does not dissipate, under **section 47** of **Law of Succession Act** and **rule 73** of the **Probate and Administration Rules**, I make an order restraining the respondent from transferring or otherwise disposing LR No. 12715/163 (Grant Number 44329). This order shall be in place for 90 days. I hope that will be sufficient time for the applicant to persuade the appropriate court to preserve the parcel.
9. To that extent, the preliminary objection dated 14th December 2020 by the respondent is sustained.
10. I make no order as to costs.

DATED and DELIVERED at NAIROBI this 23RD day of JUNE 2021.

A.O. MUCHELULE

JUDGE