



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 1029 OF 2016

IN THE MATTER OF THE ESTATE OF MILKA MURUGI WANGENDO (DECEASED)

DIANA WANJIRU WANG'ENDO.....APPLICANT

V E R S U S

EDWARD GACHANGO WANG'ENDO.....RESPONDENT

RULING

(1) **DIANA WANJIRU WANG'ENDO** (the Applicant herein) filed in the High Court this Notice of Motion dated **30th September 2020** seeking orders as follows:-

1. SPENT

2. SPENT

3. THAT an order of inhibition be issued prohibiting any dealings either by way of sub-division, lease, charge, transfer or sale of the parcels of land known as land Reference Nos. GATAMAIYU/KAMBURU/3134 and GATAMAIYU/KAMBURU3135 pending the conclusion of succession proceedings herein.

4. THAT the costs of this application e borne by the Estate.

(2) The Motion which was premised upon **Section 45, 47 and 81** of the **Law of Succession Act, Rule 73** of the **Probate and Administration Rules** and all enabling provisions of law was supported by the Affidavit of even date sworn by the Applicant.

(3) The Respondent **EDWARD GACHAGO WANG'ENDO** opposed the application through the Replying Affidavit dated **23rd October 2020**. The Applicant then filed a Further Affidavit dated **9th November 2020**. The application as canvassed by way of written submissions. The Applicant filed her written submissions dated **22nd April 2021** whilst the Respondent relied upon his written submissions dated **10th May 2021**.

BACKGROUND

(4) This Succession Cause relates to the estate of **MILKA MURUGI WANG'ENDO** (hereinafter the '**Deceased**') who died intestate on **5th June 2015**. One **ZEPHANIA WANYOIKE WANG'ENDO** and the Applicant herein **EDWARD GACHAGO WANG'ENDO** were appointed as the joint Administrators of the estate of the Deceased. The Applicant **DIANA WANJIRU WANG'ENDO** is a daughter of the Deceased and therefore a beneficiary of her estate.

(5) The Applicant contends that on **22nd June 2016** the court issued an '**inhibition order**' prohibiting the transfer, sale, subdivision, lease, charge or any disposition of the assets comprising the estate of the Deceased. That amongst said assets affected by the inhibition order was the piece of land known as **GATAMAIYU/KAMBURU/186**.

(6) The Applicant alleges that notwithstanding the orders of prohibition issued by the Court the Respondent and her co-Administrator **ZEPHANIA WANYOIKE WANG'ENDO** (now also Deceased) proceeded to subdivide the **Plot No. 186** into several portions being:-

(i) **Gatamaiyu/Kamburu 3134**

(ii) **Gatamaiyu/Kamburu 3135**

(iii) **Gatamaiyu/Kamburu 3381**

(iv) **Gatamaiyu/Kamburu 3380**

(7) That the Respondent and his Co-Administrator then sold and transferred two of the sub-divisions being **Gatamaiyu/Kamburu 3381** and **Gatamaiyu/Kamburu/3380** to third parties. They then further caused the remaining two sub-divisions being **Gatamaiyu/Kamburu/3134** and **Gatamaiyu/Kamburu/3135** to be registered in the name of **Zephania Wanyoike Wang'endo**. (the Respondent herein).

(8) The Applicant expresses the apprehension that if the orders sought are not granted the Respondent (who is the only surviving Administrator of the estate of the Deceased) will continue to intermeddle in the estate and may proceed to sell, lease, charge and / or transfer the two remaining subdivisions under the guise that these were not subject of the prohibition order issued on **22nd June 2016** hence the present application.

(9) The Respondent vide his Replying Affidavit dated **23rd October 2020** opposed the Application. The Respondent averred that during their lifetime his parents had gifted various parcels of land to himself, his brothers and the first born unmarried sister as follows:-

(i) **Gatamaiyu/Kamburu/186** – to **Zephania Wanyoike Wang'endo**

(ii) **Gatamaiyu/Kamburu/1010** – to **Harun Mbugua Wang'endo**

(iii) **Gatamaiyu/Kagaa/1057** – to **Edward Gachago Wang'endo**

(iv) **Gatamaiyu/Kamburu/107** – to **Jane Wanjiru Ngendo**

(v) **Gatamaiyu/Kamburu/T 210 & 212** – jointly to **Zephania Wanyoike Wang'endo** and **Edward Gachago Wang'endo**

(10) The Respondent confirms that he and **Zephania Wanyoike Wang'endo** (the now Deceased Co-Administrator) were issued with the Grant of Letters of Administration in respect of the estate of their late mother on **4th May 2016**. That later on **30th April 2018** the applicant and another sibling **HARUN MBUGUA WANG'ENDO** were enjoined as Co-Administrators. The Respondent claimed that the Applicant has generally been unco-operative in matters relating to the distribution of the estate of their late mother.

(11) The Respondent stated that sometime in the year **2017**, one of the Co-Administrators **Zephania Wanyoike Wang'endo** fell ill and sought to sell the piece of land which had been gifted to him being **Gatamaiyu/Kamburu/186** (the subject land) in order to meet his medical expenses. The Respondent stated that all the beneficiaries except the Applicant herein gave their consent for the sale of the land. Accordingly the parcel of land known as **Gatamaiyu/Kamburu/186** was sub-divided and sold to willing buyers.

(12) The Respondent went on to state that the said Co-Administrator **Zephania Wanyoike Wang'endo** passed away on **30th June 2020**. That to date no Letters of Administration have been taken out in respect of his estate. That by this application the Applicant is effectively seeking to disinherit the widow and children of '**Zephania Wanyoike**'. He urged the Court to dismiss this application.

(13) By the Further Affidavit dated **9th November 2020** the Applicant retorts that the Replying Affidavit contains an admission that the subject land was sub-divided and sold. She asserts that the medical needs of the Co-Administrator do not provide justification or disobedience of Court Orders. The Applicant reiterates that without further orders the Respondent will continue to intermeddle with the estate of the Deceased.

ANALYSIS AND DETERMINATION

(14) I have carefully considered this Application, the Affidavits in Reply as well as the written submissions of both parties. It is not in dispute that the Deceased whose estate forms the subject of these proceedings one **Milka Murugi Wang'endo** passed away intestate on **5th June 2015**. A copy of her Death Certificate Serial No. [particulars withheld] is annexed to the Affidavit in Support of the Petition for Grant of Letters of Administration filed at the **Kiambu Law Courts**.

(15) It is also not disputed that Letters of Administration in respect of the estate of the Deceased were initially issued on **4th May 2016** to **Zephania Wanyoike Wang'endo** and **Edward Gachago Wang'endo** (the Respondent herein). A copy of this Grant of Letters of Administration Intestate is annexed to the Supporting Affidavit dated **30th September 2020** (Annexure '**DWW-1**'). It is not disputed that on **30th April 2018**, the Applicant and **Harun Mbugua Wang'endo** were enjoined as Co-Administrators.

(16) The Applicant stated that the High Court on **22nd June 2016** issued an inhibition order in respect of the parcel of land known as **Gatamaiyu/Kamburu/186**, which the Applicant alleges is one of the assets belonging to the estate of the Deceased. Annexed to the Applicant's Supporting Affidavit is a copy of the relevant order (Annexure '**DWW-2**').

(17) The said Order which was made by **Hon. Lady Justice Margaret Muigai** read inter alia as follows:-

3. THAT the estate of the Deceased shall be preserved under Section 45 Law of Succession Act Cap 160 until the hearing and

determination of the application.

4. THAT the Respondents shall file the Replying Affidavits and serve.

5. THAT status quo be maintained pending interpartes hearing and determination of this application, inhibition order be and is hereby issued forbidding and/or any prohibiting any transfer, sale, sub-division, lease, charge and/or any disposition, further dealings and/or registration of any instrument whatsoever on the following properties:-

- a) GATAMAIYU/KAMBURU/T.210
- b) GATAMAIYU/KAMBURU/1057
- c) GATAMAIYU/KAMBURU/186
- d) GATAMAIYU/KAMBURU/T.212
- e) GATAMAIYU/KAMBURU/407.” [own emphasis]

(18) The Respondent in his Replying Affidavit it claims that the parcel of land in question had been ‘gifted’ to the Co-Administrator ‘Zephania Wanyoike’ by their parents. The Respondent produces no documentary evidence to prove that said ‘gift’ was actually made. There is no Will written by the Deceased, no document indicating her intention to gift Plot 186 to ‘Zephania Wanyoike’ and no evidence of a transfer of the said parcel of land executed in favour of the said ‘Zephania Wanyoike.’

(19) Indeed a look at the original Title Deed for Title Number **Gatamaiyu/Kamburu/186** filed at **Kiambu Law Courts** on the **9th April 2016** indicates that the property is registered to **MILKA MURUGI WANG’ENDO** of I.D No. **4316864**, who was the Deceased. There is no evidence to show that the Deceased ever transferred that property during her lifetime. I therefore reject the contention by Respondent that this parcel of land had been gifted to ‘Zephania Wanyoike.’ Instead I find that **Plot 186** was one of the assets forming the estate of the Deceased. No doubt this is why the Honourable Judge ordered for the preservation of the said property pending the final determination of the Succession Cause.

(20) As pointed out by the Applicant, the Respondent in his Replying Affidavit basically admitted that **LR Number Gatamaiyu/Kamburu/186** was sub-divided and sold despite the order which had been made by the Court for its preservation.

(21) The Applicant alleged that **Plot 186** was sub-divided into several portions which included:-

- (i) **Gatamaiyu/Kamburu/3381**
- (ii) **Gatamiyu/Kamburu/3380**

which two subdivisions were sold to third parties. Annexed to the Supporting Affidavit are copies of official Searches dated **18th September 2020** for sub-division **Number 3381** showing that the same is now registered to one **STEPHEN KAMAU KIMANI** whilst sub-division **Number 3380** is now registered to one **PETER GACHODE MUNGAI**. None of the above registered owners of the said sub-divisions of **Plot 186** is a beneficiary to the estate of the Deceased.

(22) From the above it is manifestly clear that even in the face of a court Order expressly prohibiting any interference in the estate of the Deceased, the Respondent allowed, participated in and/or sanctioned the sale by his Co-Administrator of **Plot 186** to third parties. It is trite law that Courts do not make orders in vain. All parties have an obligation to obey Court Orders.

(23) In **TRUSTED SOCIETY OF HUMAN RIGHTS ALLIANCE –VS- CABINET SECRETARY FOR DEVOLUTION AND PLANNING & 3 OTHERS [2017]eKLR** the Court stated as follows:-

“It is plain and unqualified obligation of every person against, or in respect of whom, an order is made by a Court of competent jurisdiction, to obey it unless and until that order is discharged The Court does not, and ought not to be seen to make orders in vain; otherwise the Court would be exposed to ridicule, and no agency of the constitutional order would then be left in place to serve as a guarantee for legality, and for the rights of all people.” [own emphasis]

(24) Likewise in **SHIMERS PLAZA LIMITED –VS- NATIONAL BANK OF KENYA LIMITED [2015]eKLR** the Court of Appeal stated as follows:-

“We reiterate here that court orders must be obeyed. Parties against whom such orders are made cannot be allowed to trash them with impunity. Obedience of Court orders is not optional, rather, it is mandatory and a person does not choose whether to obey a Court Order or not.” [emphasis added]

(25) The Respondents argument that the sale of the said land was necessitated by the need to secure funds for the treatment of **Zephania Wanyoike** who was ailing is **not** persuasive. The parties had the option of returning to Court and seeking orders for the sale of **Gatamaiyu/Kamburu/186** to cater for the required medical costs. They opted instead to defy a Court Order prohibiting any interfere with the assets of the estate.

(26) Given this history it is manifest Court orders are required in order to preserve the remaining sub-divisions which came out of **Plot 186** being **L.R. Gatamaiyu/Kamburu/3134** and **L.R. Gatamaiyu/Kamburu/3135**. **Section 68(1)** of the **Land Registration Act** provides that:-

“The Court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time, or until the occurrence of a particular event, or generally until a further order, the registration of any dealing with any land, lease or charge.

(2) A copy of the inhibition under the seal of the Court, with particulars of the land, lease or charge affected, shall be sent to the Registrar, who shall register it in the appropriate register.”

This provision gives the Court the discretion to make orders restraining any dealing on land in order to preserve a property pending the hearing and determination of a matter.

(27) In **PHILLIP MWANGI GITHINJI –VS- GRACE WAKARIMA GITHINJI (2004)eKLR**, **Hon. Lady Justice Hannah Okwengu** (as she then was) stated as follows:-

“An order of inhibition issued under Section 128 of the Registered Land act is a kin to an order of prohibitory injunction for it restricts the registered owner and any other person from having their transaction regarding the land in question registered against the Title. Before the Court can issue such an order it must be satisfied that the person moving the Court for such orders has good grounds for requesting such an inhibition, such grounds would normally be in the form of a sustainable claim over the suit land.” [own emphasis]

(28) The Applicant herein being a beneficiary of the estate of the Deceased has a claim which is yet to be determined by the Court. She therefore has sufficient grounds and has requisite **locus standi** to seek the orders prayed for in this application. Given that the estate of the deceased is yet to be distributed amongst the beneficiaries it is essential that the parcel of land known as **Gatamaiyu/Kamburu/3135** and **3134** which were derived from the unlawful subdivision of **Gatamaiyu/Kamburu/186** be preserved pending the determination of this Succession Cause. Accordingly I do allow the Notice of Motion dated **30th September 2020** and I make the following orders:-

(i) An order of inhibition be and is hereby issued prohibiting any dealings either by way of sub-division, lease, charge, transfer or sale of the parcels of land known as Land Reference Numbers **GATAMAIYU/KAMBURU/3134** and **GATAMAIYU/KAMBURU/3135** pending the final determination of this Succession Cause.

(ii) This being a family matter each party will bear its own costs.

DATED IN NAIROBI THIS 30TH DAY OF JULY, 2021.

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MAUREEN A. ODERO

JUDGE