



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

SUCCESSION CAUSE NO. 258 OF 2016

IN THE MATTER OF THE ESTATE OF WANJOHI KIRUMBA (DECEASED)

BETH WANGUI NDUATI

RUTH NJERI NJOROGE.....APPLICANTS

-VERSUS-

ROSE WAMBUI.....1ST RESPONDENT

MICHAEL MWANGI2ND RESPONDENT

JANE NJERI.....3RD RESPONDENT

MARY WANGUI.....4TH RESPONDENT

SAMUEL KINUTHIA.....5TH RESPONDENT

RULING

1. This is a ruling on application dated **28th September 2016**, filed by the applicants seeking the following orders: -

a. Spent

b. That this Honorable Court be pleased to hold the respondents in contempt of court orders and commit them to civil jail for a period of six months for disobeying court orders issued on 22nd April 2016.

c. That in the alternative this honorable court do order the attachment of the respondents' properties as consequences of the breach or the disobedience of the court orders.

d. That cost of the application be provided for.

2. The application is supported by the affidavit sworn by **Ruth Njeri Njoroge** one of the applicants

BACKGROUND

3. Pursuant to application dated 21st April 2016, the Court issued conservatory orders on 22nd April 2016 against the respondents restraining them, their agents, and/or servants from evicting, demolishing, constructing, and/or in any way interfering and or intermeddling with the property known as **Unsurveyed Commercial Plot No. 12** within Gilgil town pending the hearing of the application.

4. The applicant's contention is that the respondent in blatant breach and disregard to the Court orders of 22nd April 2016 proceeded to evict the applicant from the suit premises, demolished structures belonging to some of the beneficiaries, and erected new structures.

5. The applicants pray that the respondents be committed to civil jail for contempt relating to the orders issued on 22nd April 2016 by ordering their committal to civil jail or in the alternate the attachment of their properties.

6. In response the respondent who is a beneficiary of the 2nd house through **Michael Mwangi** filed a replying affidavit on 21st October 2016

and averred that the application is brought in bad faith and a waste of time.

7. The respondent submitted that Gilgil Township Plot No. 12 does not reflect in the index maps and as per the development plan **Plot No. R/35/89/4 Unsurveyed Commercial Plot No. 12A** located in Gilgil town being block no. 154 Gilgil township. That he was allocated Plot No. 12A by Nakuru County Council in the year 2012, while Plot No. 12 was allocated to **Benjamin Wanjohi Kirumba** by the land's office in the year 1992. And that prior to the filing of this suit he had allocated Plot No. 12 to **David Mburu Njuguna**.

8. Parties agreed to proceed by way of written submissions.

APPLICANTS SUBMISSIONS

9. By submissions dated 10th June 2020, the applicants submitted that **Michael Mwangi** demolished the house belonging to the applicant and set up his house after the applicant fearfully left her matrimonial home after being threatened.

10. The applicant submitted that the respondent was aware of the conservatory orders issued by the Court which were served upon him and cited the case of **Tetu Farmers Co. Ltd v Joseph Nderitu Wanjohi (2016) eKLR** where the Court set out the four elements of civil contempt of court as follows: -

- i. order to be clear,**
- ii. defendant to have knowledge of the order,**
- iii. defendant acted in breach of the order and**
- iv. the conduct was deliberate.**

11. The applicant further submitted that the respondents have the duty to obey the law and obedience is fundamental to the administration of justice and the rule of law and cited the case of **Teachers Service Commission vs Kenya National Union of Teachers & 2 others (2013) eKLR** where the Court observed that the reason why Court will punish for contempt of court is to safeguard the rule of law which is fundamental in the administration of justice...

12. The applicants urged the Court to find the respondents in contempt and commit them to civil jail for a period of 6 months and/or in the alternative attach the respondent's properties.

RESPONDENTS CASE

13. The respondents submitted that the applicants are wasting the Court's time and instead the Court should go ahead and distribute the estate of the deceased.

ANALYSIS AND DETERMINATION

14. Record show that, the applicants being the widows of the deceased filed petition for letters of administration intestate on 21st April 2016. They averred that the deceased died intestate living behind beneficiaries from his 3 houses. They aver that prior to his demise, he had allocated his two parcels of land to his sons from the 3 houses and the matrimonial home had been allocated to the third wife **Ruth Njeri** where she lived.

15. The applicants avers that the deceased had subdivided his two parcels as follows:

Kampi Somali estate:

1. Charles Mwangi
2. John Waweru
3. David Wambugu

Plot 12 near Gilgil Health Centre

1. Joseph Kinyajui
2. Paul Wandimi
3. Michael Mwangi
4. Samuel Kinuthia

5. Ruth Njeri.

16. The dispute herein is in respect to plot no.12. It was submitted that plot no.12 had been subdivided by the deceased and each party allocated a portion of it and another portion sold to a third party.

17. Conservatory orders were issued on 22nd April 2016 against the respondents. The applicants argue that respondents who are beneficiaries of the 2nd house are in contravention of the Court orders issued on 22nd April 2016.

18. I note that **Justice Ndungu** directed the deputy registrar to visit the parcel in question. She noted that there was an old wooden structure developed by the deceased father/husband where the family of **Ruth Njeri Njoroge** lived with **Michael Mwangi** and **Samuel Wanjohi** as they grew up. From the report, **Michael Mwangi** has built a house on plot 12C but plot 12 D given to **Samuel Kinuthia** is fenced but undeveloped and Michael Mwangi has also sold plot 12 A to a third party; they claim it does not form part of the deceased's estate.

19. The deputy registrar also noted that parties have different maps for the same parcel which will necessitate evidence been adduced by the parties to enable Court determine the correct position. As captured in paragraph 15 above, the applicant had subdivided the two parcels of land and sold a plot to a third party.

20. In view of the findings on the ground by the deputy registrar, it would be necessary for the the parties to be given an opportunity to adduce evidence to enable the court ascertain clear position before any further orders or directions are given.

21. FINAL ORDERS

a. **That *viva voce* evidence be adduced to establish the clear position on the ground and deceased's assets and mode of distribution.**

b. **Each party to bear own costs of the application.**

RULING dated, signed and delivered via zoom at **Nakuru**

This **23rd** day of **September**, 2021

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RACHEL NGETICH

JUDGE

In the presence of:

Jenifer - Court Assistant

Mr. Njoroge for Applicants

Ms. Wanuna holdinb brief for Respondents