



REPUBLIC OF KENYA

IN THE HIGH COURT AT EMBU

SUCCESSION CAUSE NO. 1053 OF 2002

IN THE MATTER OF THE ESTATE OF CHARLES NJERU MURUATETU (DECEASED)

CHRISTOPHER KARIUKI NJAGI TUKIKO.....1ST APPLICANT

DOMINIC MUCHIMBI TUKIKO.....2ND APPLICANT

VERSUS

SCOLASTICA GICHUKU NJAGI.....1ST RESPONDENT

PETERSON NYAGA MUGO.....2ND RESPONDENT

AND

BENARD MURATHI CHARLES.....ADMINSTRATOR

LUCY GATURI NJERU.....ADMINISTRATRIX

RULING

A. Introduction

1. This ruling is for the summons dated 9th October 2019 in which the applicants seeks for orders to restrain the respondents from interfering with LR. No. Nthawa/Riandu/6207, resultant sub-division of LR. No. Nthawa/Riandu/593 pending the determination of the application for revocation of grant dated 30th September 2019. The applicant also seeks orders of inhibition against the registration of any dealings over land parcel No. Nthawa/Riandu/6207.
2. It is the applicants case that the 1st respondent and themselves are successors of one Heshbon Njagi Tukiko who according to the certificate of grant issued to the deceased's estate herein was to inherit 3½ acres out of land parcel No. Nthawa/Riandu/ 593 which he had bought from the deceased.
3. The applicants further state that the late Tukiko had filed an application dated 14th October 2011 seeking to have the Deputy Registrar execute the transmission documents in place of the administrators herein to have 3½ acres carved out of land parcel no. Nthawa/Riandu/593 but he died before the same was determined.
4. It is the applicants case that the 1st respondent subsequently without knowledge of the applicants was issued with a grant ad-litem for purposes of substituting the late Tukiko and subsequently replaced the late Tukiko as a party in this cause. The applicant further states that subsequently 3½ acres was carved out of LR. No. Nthawa/Riandu/593 leading to the emergence of land parcel No. Nthawa/Riandu/6207 which was subsequently registered in the name of the 1st respondent wholly.
5. The applicants state that they have lived on the 3½ acres carved out of land parcel No. Nthawa/Riandu/593 now land parcel No. Nthawa/Riandu/6207 (hereinafter called the suit land). Since 198, the applicants have extensively developed the land and now face threats of eviction from the 2nd respondent who bought the land from the 1st respondent.
6. In rejoinder, the 1st respondent deposed that the present succession proceedings are not in respect of the estate of Heshbon Njage Tukiko but of one Charles Njeru Muruatetu. The 1st respondent further states that the applicants are not entitled to the suit land herein as it was purchased by her sister, Angela Wambugi Njagi for their father, the late Tukiko as the applicants had refused to support him even during his illness leading up to his death.

7. The 1st respondent further states that the applicants have not resided on the suit land since 1981 as alleged but only came in after the late Tukiko had passed on sometime after the 20th August 2015.

8. The 1st respondent further stated that despite being aware of the probate proceedings in relation to the estate of the late Tukiko the applicants refused to financially contribute towards the same forcing the 1st respondent to pursue the matter single handedly. The 1st respondent further stated that she and her sister sold the suit land herein so that they could buy land elsewhere to escape the applicants' constant disturbance.

9. The 1st respondent further states that the 1st applicant has not shown that he has authority of the 2nd applicant to plead and further that their application is an afterthought.

10. The 2nd respondent deposed that he was an innocent purchaser for value having purchased the land in issue from the 1st respondent and further that he has been in occupation of the said land contrary to allegations by the applicants.

11. The said Agnes Wambugi Njagi in her affidavit in support of the respondent's case deposes that she is the one who bought the land in issue for her late father Heshbon Njage Tukiko so that she could build a house for her on the land. She did construct a semi-permanent house on the land but the seller who is the deceased in this case declined to effect the transfer.

12. The parties were to dispose of the application by way of submissions but only the applicants filed theirs.

B. Applicants' Submissions

13. It is submitted that all the survivors of the late Heshbon Njagi Tukiko are entitled equally to a share of the deceased's estate in this case the suit land. It is further submitted that there is real risk that they will be evicted as the 2nd respondent has already deposited building materials on the land.

14. The applicants submit that they are in compliance with the principles set out in the case of **Giella Cassman Brown & Co. Ltd (1973) E.A. 358**. It is submitted that they have a *prima facie* case with high chances of success in the application for revocation of grant and further that the 1st respondent was issued with a limited grant ad litem which she used to inherit the late Tukiko's estate contrary to the provisions of Section 55 (1) of the Law of Succession Act.

15. Reliance is placed on the case of **In the Estate of Helena Wangechi Njoroge (deceased) [2015] eKLR** where it was held that the powers set out in section 82 can only be exercised by someone holding a full grant not a limited one as done by the 1st respondent and as such the transactions effected by the 1st respondent over the land are null and void.

C. Analysis & Determination

16. I have considered the application, the affidavits, and the submissions. In my considered view, the issue for determination is:

Whether the applicants meet the threshold for grant of orders of inhibition sought.

17. First, section 68 (1) of the Land Registration Act provides that;

“Section 68(1) of the Land Registration Act.

The court may make an order of 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.”

18. Order 40 of the Civil Procedure Rules empowers this court to grant injunctive orders for preservation of property pending disposal of the case. Such orders are purported to preserve the property from acts that would otherwise render a suit nugatory and to give an opportunity to hear and decide the matter. It is therefore necessary to preserve the status quo pending the hearing and determination of the issue before court.

19. In **Mwambeja Ranching Company Limited & another v Kenya National Capital Corporation Limited (Kenyac) & 6 others [2015] eKLR** F. Gikonyo Judge held the view that orders of inhibition envisaged under section 68 of the Registration of Land Act are in the nature of prohibitory injunction and act to preserve the suit property just as an interlocutory injunction would do. He stated;

“Of great significance on the request for an order of inhibition is Section 68(1) of the Land Registration Act which reads as follows; 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. The case of Japhet Kaimenyi M'ndatho v M'ndatho M'mbwiria [2012] eKLR dealt with the threshold for granting orders of inhibition in a pointed manner as follows; “In an application for orders of inhibition, in my understanding, the applicant has to satisfy the following conditions: -

- i. That the suit property is at the risk of being disposed of or alienated or transferred to the detriment of the applicant unless Preservatory orders of inhibition are issued.*
- ii. That the refusal to grant orders of inhibition would render the applicant's suit nugatory.*
- iii. That the applicant has arguable case."*

I am content to refer to the decision by Okwengu, J (as she then was) in the case of Philip Mwangi Githinji v Grace Wakarima Githinji (2004) eKLR when she rendered herself inter alia; "An order of inhibition issued under section 128 of the Registered Land Act is akin 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."

20. I find that this sets out the correct position for issuance of prohibition orders where the applicant has a claim which has not been determined
21. It is not denied that the applicants are the children of the late Tukiko. It is also undisputable that the only property forming part of the late Tukiko's estate is land parcel No. Nthawa/Riandu/6207 as per the grant dated 30th September 2019.
22. It is evident that there is a disagreement as to who is the owner of the land in issue with the applicants claiming it belongs to the late Tukiko whereas the 1st respondent insists that the suit land was purchased by her sister Angela Wambugi Njagi for their father who was landless or in need and that the respondents have no interest in the land.
23. It is evident that the children of the late Hsbon Njage Tukiko are divided on who has a right to the land even bearing in mind that it was bought from the deceased in this case. It is alleged that the beneficiaries still claim more than 3.5 acres from the estate of Charles Njeru Muruatetu on behalf of their late father.
24. For the foregoing reasons, I do not find it appropriate to grant injunctive orders against the 2nd respondent who is currently using the land. There are too many disputes between the beneficiaries of the late Heshbon Njage Tukiko that require to be resolved first.
25. This application also seeks for orders of inhibition and status quo to be maintained pending hearing and determination of the summons for revocation of grant dated 30th September 2019. It is appropriate that orders of inhibition be allowed pending hearing and determination of the said summons.
26. It is important that the estate of the late Heshbon Tukiko be preserved pending determination of the prayer for revocation of grant and pending resolution of disputes among the beneficiaries in this application.
27. In my considered view, the application dated 9th October 2019 is partly successful. I hereby make the following orders: -
 - a) There be an order of inhibition against any transactions relating to land parcel No. Nthawa/Riandu/6207 pending the hearing and determination of the prayer for revocation of grant in the application dated 30/09/2019.*
 - b) Costs to be in the cause.*

28. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 28TH DAY OF JANUARY, 2020.

F. MUCHEMI

JUDGE

In the presence of: -

Ms. Muriuki for Okwaro for Applicants

1st Applicant present