



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 276 OF 1998

JULIUS KIRIMI NKABU.....1<sup>ST</sup> PETITIONER

VERSUS

WILFRED KANGANGI.....1<sup>ST</sup> OBJECTOR

GRACE GAUKU NKABU.....2<sup>ND</sup> OBJECTOR

RULING

1. The petitioner herein filed application dated 3<sup>rd</sup> March 2020 premised on **Section 47 of the Law of Succession Act** and ostensibly seeking the following Orders;

**a. Spent**

**b. That this Honourable Court be pleased to grant an Order of injunction and preservative orders restrain the Respondents, their agents or servants from destroying or interfering with the applicants properties which include dwelling house, tea bushes or any other property within the estate comprised of L.R. Abogeta/U-Kithangari/517 or otherwise evicting the applicants pending the valuation and compensation of any properties falling out of each of the dependants entitlement upon and agreed subdivisions of the estate.**

2. The application was supported by the sworn affidavit of **Julius Kirimi Nkabu** who averred that this court issued the grant on 6/12/2018. He averred that the co-administrator applied for security and was issued by this court without his involvement. That his co-administrator has taken upon himself to divide the land without regard of each of the beneficiaries' development on the land. That the respondents have engaged in destruction of the properties by spraying herbicide, felling down trees, arresting children found plucking tea and having them face criminal charges. That the orders are necessary to maintain peace and tranquillity and to avoid any bloodshed.

3. The application was opposed by **Grace Gauku** through Replying affidavit filed on 21<sup>st</sup> July 2020. It was her averment that the applicant made an application for stay of execution of the certificate of the grant on the same day she made an application for security during the subdivision of **L.R. No. ABOGETA/ U-KITHANGARI/57**. That the court heard the two applications simultaneously and ordered the applicant to file his appeal within 21 days failure to which the application for security will be allowed.

4. That the applicant failed to file its appeal, this court issued an order for provision of security and upon issuance of such order she divided the land equally among the beneficiaries. That all the beneficiaries are in occupation and in utilization of their respective portions and no one is interfering with the other. She prayed that this court removes the applicant as an administrator and/or in the alternative authorize this court's executive officer to execute the transmission documents on his behalf.

5. The court directed the parties to canvass the application through written submissions. None of the parties have filed their submissions.

6. I have considered the application and the Replying affidavit. I have also considered the evidence attached to the affidavits. The issue for determination is whether the applicant has satisfied the court for grant of an injunction as provided for in **Section 47 of the Law of Succession Act and 73 of the Probate and Administration Rules**. The principles guiding the grant of Injunctions were settled in the case of **Giella -V-Cassman Brown (1973) EA 358** in which it was held :- **"The conditions for the grant of an interlocutory injunction re now, I think, well settled in East African. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not be normally granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience."**

7. On 20<sup>th</sup> June 2019 this court had granted leave to the applicant to file his appeal within fourteen (14) days and in default the Administrators were to be offered with security to oversee the implementation of the grant herein.

8. The application herein was filed on 3<sup>rd</sup> March 2020 6 months after the orders were issued and two years after the issuance of the grant. The application was therefore not made timeously.

9. This court distributed the estate equally amongst the beneficiaries and also ordered that the distribution should factor in where each of the beneficiaries were residing. At the time of the distribution of the estate and immediately after the Applicant did not raise the issue of valuation of the developments in the portion that he was occupying. The applicants prayer that the implementation of the grant be stayed pending valuation of the estate and compensation is therefore an afterthought meant to delay the process.

10. The Applicant alleges some of his properties have been destroyed and attached some photographs of the alleged destruction of the properties. He however did not attach any report made to the police and/or any other authority confirming that indeed his co-administrator committed the alleged destruction. He also alleged that his children have been charged in flimsy criminal proceedings but he did not attach any of those charges.

11. When the Applicant failed to lodge Appeal after leave was granted the Respondents proceeded with the survey and the subdivision of the estate under the supervision of police officers in pursuit of this court's order and Section 83 of the Law of Succession Act. The Police officers supervising the implementation of the grant could not have failed to take action if the Respondent caused any destruction on the ground during the exercise and therefore this court finds that the applicants allegations have not raised a prima facie case and his application cannot stand.

12. This cause has been in court for over 20 years due to the suspicious conduct of the applicant who has been bringing applications after another but litigation must come to an end.

13. The application dated 3<sup>rd</sup> March 2020 is dismissed to the cost to the Respondent.

**HON.ANNE ADWERA ONG'INJO**

**JUDGE**

**RULING DATED AND DELIVERED AT MERU ON THIS 24<sup>th</sup> DAY OF SEPTEMBER 2020.**

**HON.ANNE ADWERA ONG'INJO**

**JUDGE**

**In the presence of:-**

Mr Gikunda Advocate for applicant

Mr Kithinji Advocate for 2<sup>nd</sup> Administrator.

**HON.ANNE ADWERA ONG'INJO**

**JUDGE**