



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KIAMBU**

**SUCCESSION CAUSE NO. 101 OF 2017**

**IN THE MATTER OF THE ESTATE OF NJUGUNA MWATHI (DECEASED)**

**JOHN THAIRU NJUGUNA.....OBJECTOR/RESPONDENT**

**VERSUS**

**BEATRICE NGENDO KARANJA.....ADMINISTRATOR/APPLICANT**

**RULING**

1. Before court is the Summons filed on 23<sup>rd</sup> August, 2018 brought under Section 45 of the Law of Succession Act Rules 49 of the Probate and Administration Rules. The Administrator/Applicant ("Administrator") sought the following orders:-

- a) **That the court does order the objector/Respondent JOHN THAIRU NJUGUNA aka JOHN GITAU THAIRU to vacate and/or does grant vacant possession of 17 parcels of land namely GITHUNGURI/GATHANGARI/3690 TO 3706 parcels excised from GITHUNGURI/GATHANGARI a 653 parcel bequeathed to JAMES NJUGUNA KARANJA in the grant of probate dated 23/03/2000, to enable the administrator complete administration.**
- b) **That the court also grants orders of eviction if the said objector/respondent fails to surrender vacant possession.**
- c) **That the eviction orders if granted do apply to the sisters to the respondent LUCY WANJIKU NJUGUNA, EDITH NJERI & HANNAH WAMBUI NDIRANGU who are surviving children/beneficiaries to the said estate from subverting the orders granted against the respondent/objector".**

2. The Application is premised on the ground that the objector/respondent has been residing on the suit property thus vacant possession cannot be granted to JAMES NJUGUNA KARANJA the registered owner and beneficiary under the grant of probate issued herein.

3. **Beatrice Ngendo Karanja** the executrix swore the supporting affidavit. She deposed that a grant of probate was granted to her on 23/03/2000 and confirmed on 24/10/2000; that the objector and his sisters LUCY WANJIKU NJUGUNA, EDITH NJERI & HANNAH WAMBUI NDIRANGU the surviving children of the deceased have filed several objections which were dismissed by the court and the executrix ordered to complete administration. She further contended that the Respondent occupies parcels of land known as GITHUNGURI/GATHANGARI/3690 TO 3706 while his rightful share is parcel no. GITHUNGURI/GITHUNGURI/T302. She deposed that unless the Respondent is evicted from the said parcels of land, he shall waste the same and that he is bent on frustrating the administration of the estate. Finally, she deposed that the Respondent and his sisters continue to wrongfully benefit from their illegal occupation of the suit property and have refused to assist in the process of completing administration in regard to their rightful parcels of land.

4. The Respondent **John Thairu Njuguna**, opposed the summons through the replying affidavit filed on 8<sup>th</sup> October, 2018. He denied the allegations that he and his sisters have filed several objections to defeat the administration of the estate. He averred that he was not aware of the instant suit and contended that parcel **No. Githunguri/Githangari/653** has never been sub-divided and invited the court to make a visit.

5. In a further affidavit, **Beatrice Ngendo Karanja** clarified that **Succession Cause No. 2804 of 1999**, the original cause which I note is housed in this case file was determined in 2006 with the dismissal of the objections filed by the Objector/Respondent herein and others. That the Respondent went ahead and filed another cause **No. 2623 of 2009** which is now the instant case assigned a new number in Kiambu i.e **High Court Succession Cause No. 101 of 2017** upon transfer from the High Court at Nairobi. She reiterated the contents of her supporting affidavit.

6. The application was ordered to be canvassed by way of written submissions. The executrix filed her submissions on 25<sup>th</sup> October, 2018 while the Respondent did not. Counsel for the Applicant submitted that the Objector and his sisters have been in physical control of the stated assets of the estate and intermeddling therewith by continuing to unlawfully collect the income of the estate. That despite this court's order that the administration be completed, the same is not possible without the Respondents giving up the parcels unlawfully occupied.

7. The Court was urged to assist the Applicant give effect to its orders. In conclusion, the Applicant sought the court to evict the Respondent together with his sisters to enable this matter be put to rest and to bring this litigation to an end.

8. The court having considered all the matters canvassed takes the following view of the matter.

9. The deceased herein died testate in 1999 and a grant of probate was issued and subsequently confirmed in **Nairobi Succession Cause No 2804/99**. Subsequently the present Respondents filed a **Succession Cause No. 2623/09** which did not see the light of day in light of the concluded earlier cause. Nevertheless, the executrix has been unable to complete the administration of the estate due to a multiplicity of applications filed by the parties. The basic undisputed fact is that the grant of probate to the Applicant as confirmed on 24<sup>th</sup> October 2000 still subsists as all subsequent challenges have been dismissed.

10. On 23.11.17 **Ngugi, J** gave an order that the administrator completes the administration and thereafter report to the court. Hence the instant application by the administrator, seeking to have the Objector/Respondent give vacant possession or be evicted from parcels No. GITHUNGURI/GATHANGARI/3690 to 3706 being subdivisions of GITHUNGURI/GATHANGARI/653 which under the deceased's will were bequeathed to James Njuguna, whereas the Objector's portion under the will is land parcel No. **GITHUNGURI/GITHUNGURI/T 302** and improvements thereon.

11. The Objector's Replying affidavit avoids reference to these material facts and therefore makes no denial or explanation to the Applicant's assertion that his continued possession of the subject parcel has no legal basis, beyond impeding the distribution and intermeddling with the estate. In my view, it is a travesty of justice that despite the subsistence of the confirmed grant, the executrix has been unable to complete the administration of the estate for over 12 years now. In the circumstances, I am satisfied that the application before me is merited and I will grant prayers 1 and 2 of the Summons filed on 23<sup>rd</sup> August 2018, save that eviction as sought in prayer 2 will only be carried out if the Objector/Respondent fails to give up vacant possession of the subject land to the executrix before the expiry of 3 months of today's date.

12. The parties targeted in prayers 3 of the Summons were not served with the Summons and did not therefore participate at its hearing. The court cannot therefore issue any orders against them, not having heard them.

Parties will bear own costs.

**DELIVERED AND SIGNED AT KIAMBU THIS 28<sup>TH</sup> DAY OF MARCH 2019**

.....

**C. MEOLI**

**JUDGE**

**In The Presence of:-**

Mr. Njuguna Karanja for Applicant

Ms Ndirangu for the Objector/Respondent

Objector/Respondent – present

Court Clerk – Kevin Ndege