



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION CAUSE NO. 901 OF 1996

IN THE MATTER OF THE ESTATE OF HANNAH NYANGAHU MWENJA - DECEASED

TONY CHARLES WAMBAA.....1ST PLAINTIFF/APPLICANT

VIOLET WANGARI KAMBAA.....2ND PLAINTIFF/APPLICANT

VS

JACKSON NGANGA KIMACHIA.....DEFENDANT/ RESPONDENT

RULING

1. This Ruling is in respect of the Notice of Preliminary Objection dated 25th January 2019 raised against the Application dated 30.11.2018 on the grounds that;

(i) THAT the said Application is fatally defective, hopelessly misconceived, frivolous, totally devoid of Merit and Mala fides for reason inter alia that the Application is res judicata.

(ii) THAT the remedy sought by the Applicants cannot be given by the succession Court and may well be within the province of the ELC Court.

(iii) THAT the land in question is not registered in the name of the Deceased person herein.

(iv) THAT the Application is time barred and further that the Application is an attempt to review orders of this Court in a similar application which this Court lacks the Jurisdiction to entertain as it is functus officio.

2. The Application dated 30.11.2018 is seeking the following orders;

(i) THAT this Honourable Court be pleased to authorize the Registrar of Land to remove all caveat, caution or restriction placed on LR. No. MUGUGA/KANYARIRI/339 KIAMBU, to enable the Applicant and/or the appointed agent to sub-divide the parcel of land and each get his/her share.

(ii) THAT the Respondent is holding the Original Title Deed to the Property LR No. MUGUGA/KANYARIRI/339 KIAMBU, this Honourable Court should compel him to surrender the same for safe custody i.e. to the Court, failure the Deputy Registrar be ordered to sign all relevant documents to facilitate the sub-division and transfer of four (4) acres to be excised from LR No. MUGUGA/KANYARIRI/339 KIAMBU, to the Applicants in the following manner:

(a) Tony Charles Wambaa – 1 acre

(b) Violet WangariKambaa – 1 acre

(c) HottensiaWambuiKwaheria – 2 acres, AND Kiambu Land Registrar to effect the transfers and issue title deeds in the above names.

(iii) THAT the OCS Kabete Police Station do provide Security during the sub-division by the District Surveyor.

(iv) THAT this application be certified as urgent and its service be dispensed with in the first instance.

(v) The Defendant/Respondent do bear the costs of this application.

3. The parties filed written submissions in the NOPO which I have duly considered and my findings are as follows:

(i) THAT the Preliminary Objection raised herein does not meet the threshold for a Preliminary Objection as it requires ventilation of issues of fact.

(ii) The said Preliminary Objection is dismissed and parties directed to appear in Court for directions on the hearing of the Application dated 30th November, 2018.

DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 26TH DAY OF APRIL, 2019

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI