



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

(FAMILY DIVISION)

SUCCESSION CAUSE NO 3116 OF 2014

IN THE MATTER OF THE ESTATE OF NG'ANG'A NJUGUNA (DECEASED)

MARGARET WANJIKU MWAURAAPPLICANT

R U L I N G

1. The application before court is dated 2nd August, 2019. Despite service the Respondent did not file any response to the same.

2. The said application seeks for the following prayers:

i) That the court do issue a notice to the Petitioner/Respondent to show cause why she should not be committed to civil jail for disobeying the orders of this court given on 9th July, 2017 and issued on 16th October 2017 requiring her to hold the subject suit properties in trust for all the beneficiaries till the matter is heard and determined.

ii) That the hearing and determination of this application and all the other applications in this matter the Petitioner/Respondent be and is hereby restrained from continuing to construct and/or commencing any subject suit property and in particular the property known as Dagoretti/Riruta/296.

iii) That pending the hearing and determination of the main suit the Petitioner/Respondent be and is hereby restrained from continuing to construct and/or commencing any further construction of any form of building, permanent or otherwise on the subject suit property and in particular the Dagoretti/Riruta/296.

iv) That pending the hearing and determination of this application and all the other applications in this matter the Petitioner/Respondent be and is hereby restrained from cutting down any trees on any of the properties which are the subject in this suit and in particular the property known as Dagoretti/Riruta/296.

3. The application is based on grounds that the Respondent despite being aware of the court order made on 9th July 2017 she has defied the said order and is wasting the estate to the detriment of the other beneficiaries as she has commenced construction of permanent structures on the suit premises.

4. From the court record when the court issued the order subject matter of this application on the 19th of July 2017 only Mrs. Mwaura for the applicants was present in court.

The court on asking whether the said order was served the response in the court was that both the Respondent and counsel were present which is contrary to what is reflected on the court, record.

5. The courts do not give orders in vain. Secondly if an order is to be obeyed it has to be known. There is no indication that the applicant is aware of the order she is alleged to have defied.

Thirdly it appears that upon receipt of the order the Applicants went to slumber. They did not only fail to serve but appears to have lost interest in the matter.

6. Against the above background and due to lack of service of the said order I decline to grant the prayers sought and I direct that:

i. The said order be extracted and served upon counsel for the Respondent and the Respondent personally forthwith.

ii. Secondly I direct that the application for revocation of grant filed on 21st November, 2014 be set down for hearing within

the next 30 days.

iii. Costs in the cause.

Dated and Delivered in Nairobi on this 24TH day of OCTOBER, 2019.

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ALI-ARONI

JUDGE