



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERUGOYA

SUCCESSION CAUSE NO. 216 OF 2012

IN THE MATTER OF THE ESTATE OF ANTHONY GACHOKI KARIITHI (DCD)

ZIPPORAH WAIRIMU KARIITHI.....APPLICANT/PETITIONER

V E R S U S

ROSE WANGECI MUNENE

GRACE MUTHONI WAMBU.....RESPONDENTS/PROTESTORS

JANE KARIKO MURIUKI

RULING

1. The applicant Zipporah Wairimu Kariithi filed an application under **Rule 49 and 73 of the Probate and Administration Rules** seeking an order that the respondent Rose Wangechi Munene, Eunice Nyawira, Grace Muthoni and Jane Kariko be ordered to remove the restriction on land parcel No. Inoi/Kariko/2275.

2. It is based on the grounds that this court struck out the protests by the respondents and ordered that the land parcel No. Inoi/Kariko/2275 be distributed to the petitioner and her children. The petitioner has been unable to distribute the estate as the respondents have placed restrictions on the land parcel. That it would be fair and just that the restriction be removed. The respondents opposed the application and filed grounds of opposition and contend that they are the ones who have developed the land and ought to be compensated for the developments on the land by being given one acre of land or money.

3. That if they are compensated, they are willing to remove the restrictions.

4. I have considered the application. Rule 73 of the Probate and Administration Rules gives the court discretion to issue such orders as may be necessary to meet the ends of justice. It provides:-

“Nothing in these rules shall limit or otherwise affect the inherent power of the court to make such orders as maybe necessary for the ends of justice or to prevent the abuse of the process of the court.”

5. A restriction on title is meant to protect the interest of the party placing the restriction pending the hearing and determination of the suit or pending the occurrence of an event. The **Land Registration Act** defines restrictions as follows:-

“Means an interest registered under Section 76 and includes the Registrar’s Caveat.”

Under Section 76(2) of the Act provides that A restriction maybe expressed to endure for –

- A particular period.
- Until the occurrence of a particular event.
- Until a further order is made.

Such a restriction may be removed upon the application by the proprietor of the land. **Section 78 (2) of the Act** provides:-

“Upon the application of a proprietor affected by a restriction, and upon notice to the Registrar the court may order a restriction to be removed or varied or other order as it deems fit and may make an order as to costs.”

6. The respondents placed the restriction pending the hearing and determination of this cause. This is the event which the restriction had to endure.

7. The respondents filed a protest which was heard on merits. The judgment of this court dated 20/12/2017 dismissed the protest by the respondents. The respondents have not appealed against the Judgment. It is therefore clear that the restriction could only endure pending the hearing and determination of this cause.

8. The respondents have no interest in the estate. Their claim for compensation had not been raised before. This claim cannot be sustained in this cause. The jurisdiction of this court is as provided in the permeable to the law of Succession Act. It provides:-

“An Act of Parliament to amend, define and consolidate the law relating to intestate and testamentary succession and the Administration of estates of deceased persons: and for purposes connected therewith and incidental thereto.”

9. The claim by the respondents which has also been made too late in the day can only be considered in the relevant court with jurisdiction. I find that the applicants have no interest in the land forming the estate of the deceased and have no cause to have the restriction on the land. The restriction is hindering the execution of the Judgment of this court for no good cause.

In the circumstances I find that the application has merits. I allow it. I order as follows:-

1. The restriction on land parcel No. Inoi/kariko/2275 be removed forthwith.
2. The order be served on the land Registrar Kirinyaga County for compliance.
3. Costs of the application to the applicant.

Dated at Kerugoya this 29th day of November 2019.

L. W. GITARI

JUDGE