



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

HIGH COURT SUCCESSION CAUSE NO. 496 OF 2003

IN THE MATTER OF THE ESATE OF REUBEN

KABUGU KABANGA (DECEASED)

PAUL MAINA KABUGU.....APPLICANT

- V E R S U S -

JOHN KARIUKI WAIRIMU

LUCY WAHITO WAIRIMU.....RESPONDENTS

R U L I N G

The amended summons general before me is dated 27th February 2017 and amended on 23rd March, 2017. It is brought under Rules 49 and 59 of the Probation and Administration Rules.

It seeks orders as set out on the face of the application: -

1. That the respondents be ordered to cease interfering by entering into and or **cultivating L.R. Gatarakwa/Gatarakwa Block 111/1316 and 1317** and let the applicant take full possession and enjoy quiet possession of the parcels of land.
2. That in the event of disobedience of prayer (1) if granted the respondents be punished as the court may deem appropriate
3. That the respondent be condemned to pay costs.

It is supported by the affidavit of Paul Maina Kabugu sworn on 23rd March 2017.

The application was served on the respondents but despite being given time, as the record will show, they have not been able to respond to the same.

The record shows that the applicant inherited the 2 parcels of land Gatarakwa/Gatarakwa/ Bock 111/1317 and 111/1316 from his father Reuben Kabugu Kabanya (deceased). The same devolved to him under the certificate of confirmation of grant dated 29th June 2015. According to him, since then the respondents have interfered with his possession and quiet enjoyment of the two properties.

Their efforts to lay a claim to the land culminated in a suit **ELC 85/2016 (OS) IN THE MATTER OF LR GATARAKWA/GATARAKWA BLOCK III/1316 AND 1317, IN THE MATTER OF S. 38 OF THE LIMITATION OF ACTION ACT, CAP 22 LAWS OF KENYA AND IN THE MATTER OF ACQUISITION OF LAND BY ADVERSE POSSESSION**. Their claims failed as the suit was dismissed, diminishing any rights they may have claimed over the 2 parcels of land. This was clearly demonstrated by question no. (c) in the Court's ruling, which the ELC court set to determine. That is

“whether a declaration should issue to the effect that the administration of the estate of Reuben Kabugu Kabanya (deceased) is subject of their claim to land parcels LR GATARAKWA/GATARAKWA BLOCK III/1316 AND 1317 by adverse possession?”

And the court answered it in the negative.

This application is brought under rule 49 of the Probate and Administration Rules: -

“A person desiring to make an application to the court relating to the estate of a deceased person for which no provision is made elsewhere in these rules shall file a summons supported, if necessary by affidavit”.

My understanding of the rule is that the application made would be in relation to the **estate of a deceased person**. My humble view is that in this case there are no issues pending with regard to the Estate of Reuben Kabugu Kabanga (deceased). There is nothing that can be referred to as the estate of Reuben Kabugu Kibanya. The ELC court found that the titles issued to the applicant herein conferred absolute and indefeasible title to the two properties to him. Any matters related to the Estate of his father ended when he, the applicant herein became the registered proprietor of the two titles as there is no longer anything to be referred to as the estate of Reuben Kabugu Kabanya.

Clearly the application followed the outcome of the ELC case. The orders the applicant is seeking ought to have been sought in the ELC court, as they now relate to his possession and quiet enjoyment of his own property not his father's property, or property that is party of his father's estate.

My view of the matter is that in the circumstances this application as filed is an abuse of the process of this court and I proceed to strike it out, with no orders as to costs.

Dated, delivered and signed this 26th Day of January 2018 at Nyeri

TERESIA M MATHEKA

JUDGE

Court Assistant Harriet

Ms. Mwangi holding brief for Kiminda for the applicant

N/A for the respondents.