



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERUGOYA

SUCCESSION CAUSE NO. 489 OF 2014

IN THE MATTER OF THE ESTATE OF FRANCIS MURIUKI

MUCHIRA alias FRANCIS MURIUKI MUCHERA(DECEASED)

AND

PURITY WANJIKU MURIUKI.....PETITIONER

VERSUS

SUSAN MUTHONI MURIUKI.....ADMINISTRATOR/ RESPONDENT

RULING

1. The applicant **Purity Wanjiku Muriuki** filed an application dated 7th February, 2017 seeking orders that:-

- *That Faith Fides Karuana Kareithi be enjoined in this suit as an interested party.*
- *That the Court grants a temporary injunction against the administrator or intended interested party or persons claiming under them from evicting the applicant alienating or transferring or dealing in any way with plot No. 104 Kutus Pending hearing and determination of the application and summons for revocation of grant dated 30th May, 2016.*

2. The application is based on the grounds that she is a co-wife with the Respondent and a wife of the deceased **Francis Muriuki Muchira**. She has filed summons for revocation which is pending hearing in this Court. The Respondent has sold **plot No. 40 Kutus** to Faith Fides Karuana and yet the plot forms part of the estate of the deceased. The said Faith Fides Karuana has issued a notice to the applicant to vacate the said Plot claiming to have purchased it from the Respondent.

3. The application is also supported by the affidavit of the applicant. She reiterates the above grounds and annexed the notice served on her by Faith Fides Karuana annexure PWM I to vacate the plot. She contends that the plot is her inheritance from her late husband. That it is important to join Faith Fides in order to assist the Court to come to a just decision.

4. The respondent filed a replying affidavit and a supplementary affidavit. Her contention is that she is the legal wife of the deceased and the administrator of his estate. The Succession Cause was completed

and she was awarded the suit plot which she sold to the interested party. The applicant is not her co-wife, is a stranger to the family and she was only a tenant in the plot. The summons for Revocation of grant have not been determined and the plot now belongs to the interested party who cannot be restrained from using it.

5. The interested party on her part claims that she is a stranger to the estate of the deceased as she purchased the plot from the respondent. She followed the legal procedures to acquire the plot and if the applicant has any issue on her title she should move to the Environment and Land Court. That the law of Succession does not provide for the granting of injunctions.

6. I have considered the application, the submissions and the affidavits.

7. There are two issues which arise for determination. The first is enjoining an interested party and the second is issuance of temporary injunction.

8. 1) **Enjoining Interested Party**

An interested party is one who has a stake in the proceedings, though he was not party to the cause *ab initio*. He is one who will be affected by the decision of the Court when it is made, either way. The Court should not act in vain by enjoining a party that clearly would have no interest in the subsequent proceedings. The Courts have had instances to deal with the issue. I a persuasive decision in the case of **Skov Estate Limited & 5 Others V Agricultural Development Corporation & another [2015] eKLR** Justice Munayo Sila stated the following in dismissing an application for the applicants to be enjoined to the suit because they purchased the suit property from the plaintiffs' person;

“In my view, for one to convince the court that he/she needs to be enjoined to the suit as interested party, such person must demonstrate that it is necessary that he/she be enjoined in the suit, so that the court may settle all questions involved in the matter. It is not enough for one to merely show that he/she has a cursory interest in the subject matter of litigation. Litigation invariably affects many people. A judgment or order in most cases does not only affect the litigants in the matter. It does have ramifications for others as well and one may very well argue that these others have an interest in the litigation. That is a fair argument, but a mere interest, without a demonstration that the presence of such party will assist in the settlement of the questions involved in the suit, is not enough to entitle one be enjoined in a suit as interested party. In other words, there needs to be a demonstration that the interest of the person goes further than “merely being affected” by the judgment or order. It must be shown that the presence of that person is necessary, so that the issues in the suit may be settled, and that if the person is not enjoined, the court may not be fully equipped to settle the questions in the suit or may be handicapped in one way or another. A joinder may also be allowed if the intended interested party has a claim of his own, which in the circumstances of the matter, needs to be tried, or is convenient to be tried alongside the claims of the incumbent plaintiff and defendant. The threshold for joinder of an interested party should not be too low, or else, this is prone to open doors for busybodies to be joined to proceedings, merely to spectate or confuse the issues in the matter. Apart from the above, whether or not to enjoin a person as an interested party, must be looked at within the context and surrounding circumstances of each particular case.”

I need not say more. The applicant is seeking to enjoin Faith Fides Karuana Kareithi as an interested party since she purchased **Plot. No. 104 Kutus** which is part of the deceased's estate. Her enjoinder will assist the Court in settling all questions involved regarding the sale of the said plot therefore she should be enjoined. In any case the decision of this Court is likely to affect her. She should therefore be joined as an Interested Party.

9. 2) **Temporary Injunction**

In regard to temporary injunction, the interested party raised the issue that the same is not provided for in the Law of Succession Act. This issue was addressed by the Court of Appeal in the following cases:

Rajesh Pranjivan Chdasama V Sailesh Pranjivan Chudasama [2014] eKLR the Court of Appeal in dealing with whether the **Law of Succession Act** and the **Probate & Administration Rules** made thereunder allow the granting of injunctive order Stated:

“In **Floris Pierro V Giancarlo Falasconi, Civil appeal No. 145 of 2012 (UR)** this Court pronounced itself as follows:

“The appellants took the position that the Court had no such jurisdiction whereas the respondent took the contrary position. However, the High Court was persuaded that rule 73 of the Probate and Administration Rules reserved the Court’s inherent jurisdiction to allow for the grant of injunction in deserving cases. We are in total agreement with this conclusion. We have no doubt at all that the Law of Succession Act gives the Court wide jurisdiction in dealing with testamentary and administration issues of an estate. Indeed section 47 of the said Act gives the Court jurisdiction to entertain any application and determine any dispute under the Act and to pronounce such decree and orders as may be expedient. It cannot be said that such decrees and orders would exclude injunctive orders. In other words we are of the firm view that Section 47 of the Act gives the Court all embracing powers to make necessary orders, including injunctions where appropriate to safeguard the deceased’s estate. This section must be read together with rule 73 of the Probate and Administration Rules which further emboldens court’s jurisdiction to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of Court. We would imagine such orders would also include injunctive orders.”

Accordingly, we reiterate the view that injunctive reliefs are available in succession causes”.

The decision is binding on this Court. In light of the above, this Court has jurisdiction to grant injunctive reliefs. In deciding whether to grant the temporary injunction sought after by the Plaintiffs, I wish to refer to and rely on the precedent set out in the case of **Giella -V- Cassman Brown (1973) EA 358** in which the conditions for the grant of interlocutory injunction were settled as follows:-

“The conditions for the grant of an interlocutory injunction re now, I think, well settled in East African. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not be normally granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience.”

The three principles that govern the grant of an injunction are:

- i. The *Prima facie* Case;
- ii. Balance of Convenience;
- iii. Irreparable injury.
- iv. Whether the applicant may be compensated by an award of damages.

Faith Fides Karuana Kareithi has issued vacation notice to the applicant since she claims to have purchased the suit plot subject of the summons for revocation of grant. The applicant is claiming to be a co-wife of the respondent and therefore the wife of the deceased. If her application for injunction is not granted there is a risk of her being evicted from the said plot where upon she will suffer irreparable harm.

10. The applicant has made out a case for the issuance of a temporary injunction pending the determination of the summons for the revocation of the grant. **Rule 73 of Probate and Administration Rules** of the **Law of Succession Act** provides:

“Nothing in these rules shall limit or otherwise affect the inherent power of the Court to make

such orders as may be necessary for the ends of justice or to prevent abuse of process of the Court.”

The Act under **Section 47** provides:

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders as may be expedient.”

11. In conclusion I find that it is in the interest of justice that a temporary injunction be issued and the interested party to be enjoined to give her an opportunity to be heard as she may be affected by the decision of this Court. I find that the application has merits. I allow it as prayed. Costs in the cause.

Dated and delivered at Kerugoya this 25th day of January, 2018.

L. W. GITARI

JUDGE

Read out in open Court, Mr. Miano holding brief for M/S Thungu for Respondent, Mr. Maina for Appellant, No appearance for Interested Party this 25th day of January, 2018.

L. W. GITARI

JUDGE

25.01.2018