



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NUMBER 352 OF 1996

IN THE MATTER OF THE ESTATE OF GEOFFREY MUGWE NG'ANG'A.....DECEASED

RULING

1. This ruling is in respect of the summons dated 3rd April, 2017 in which Geoffrey Kamau Mugwe, the administrator (and hereinafter the applicant) seeks orders;

1. Spent

2. **THAT** the Honourable Court be pleased to lift and/or discharge a caution and prohibition registered against Title no. Gilgil Karunga Block 1/101 on 13th September, 2002 and 31st May, 2005 respectively.

3. **THAT** costs be in the cause.

2. The application is premised on the affidavit of Geoffrey Kamau Mugwe and on reasons;

1. THAT written grant of representation was issued to the applicant and confirmed on 8th December, 2016.

2. THAT the entire parcel for distribution known as Gilgil Karunga Block 1/101 is approximately 13.29 Hectares and ought to be apportioned into 6 parcels.

3. THAT the administrator's efforts to execute the grant have been frustrated by a caution entered on 13th September, 2002 in favour of Stephen Mwangi Maina.

4. **THAT** the said Stephen Mwangi Maina is not one of the beneficiaries of the estate of the deceased.

5. THAT there is no grounds upon which the caution is in place and as such should be lifted in order to allow the administrator distribute the estate accordingly.

6. **THAT** no prejudice shall be occasioned to any of the beneficiaries herein if the prayers are allowed.

3. In brief submissions, counsel for the applicant stated that the caution and prohibition registered against the subject title was done by a person who is not a party to these proceedings. It is urged that the confirmation of the grant is sufficient to have the caution and prohibition lifted.

4. I have had occasion to consider the summons, the supporting affidavit, grounds in support and counsels oral submissions.
5. I note that the succession cause herein has met the necessary legal steps culminating in the confirmation of grant.
6. Title No. Gilgil/Karunga/Block 1/101 is listed as part of the estate of the deceased.
7. Stephen Mwangi Maina is named as the person who lodged the caution and prohibition.
8. In an affidavit sworn by one Leah Gathoni Mugwe (the then administrator of the estate) on 19/9/2001, at paragraph 4 thereof, she deposes that one Stephen Mwangi Maina had entered into a sale agreement with her for the sale of 1 acre of land.
9. Noting this introduction of Stephen Mwangi Maina into the matters relating to this estate by none other than the erstwhile administrator of the estate, it would be highly prejudicial to deal with the caution and prohibition lodged by him without affording him a hearing.
10. It is in the wider interests of justice that Stephen Mwangi Maina be served with the summons dated 3rd April, 2017.
11. Consequently, I direct that the summons dated 3/4/2017 be served on Stephen Mwangi Maina. A mutually agreeable hearing date be sought at registry.

Dated and Signed at Kisii this 10th day of January, 2018.

A. K. NDUNG'U

JUDGE