



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO.227 OF 2008

IN THE MATTER OF THE ESTATE OF LAWRENCE KINOTI ZAKARY(DECEASED)

ANGELA GATUMI MUCHEKI.....RESPONDENT/PETITIONER

VERSUS

PATRICK KABURU.....APPLICANT/OBJECTOR

R U L I N G

This a ruling on the Objector's application dated 15th October 2015. It seeks the following prayers:

1. Spent.
2. Spent.
3. To inhibit all dealings in relation to land parcel number NKUENE/MITUNGULI/861 pending hearing and determination of this succession cause.
4. Spent.
5. Temporary injunction to restrain the Respondent, her agents, and any other person working under her from demolishing the deceased's houses, cutting down trees or disposing off deceased's property namely parcel number NKUENE/MITUNGULI/861 or in any manner intermeddling with the deceased's estate pending hearing and determination of this succession cause.
6. That the Courts orders be served on Lands Registrar Meru for compliance.
7. Costs of the application to be provided.

Grounds on the face of the application are that on 20th July 2015, the Respondent while in company of a group of purchasers entered the deceased's property with a view of selling the family land without the consent of family members.

That unless the Respondent is restrained, the illegal actions will benefit strangers and tis application will be rendered nugatory.

The application is supported by the affidavit sworn by Patrick Kaburu Zakayo on 15th October 2015.

He deponed that the Respondent died on 20th may 2007 unmarried and that he is the one who buried the deceased. He attached burial permit issued to him.

The Applicant averred that the Respondent secretly filed this succession cause without informing the deceased's family members who include his aged mother.

He further averred that the guarantors in this cause are the Respondent's brothers.

The Applicant urged Court to stop the Respondent from disposing the deceased's property.

In response, the Respondent filed Replying Affidavit dated 18th July 2018.

The Respondent averred that the grant was confirmed on 29th February 2012 by justice Makau and that the application herein has been overtaken by events.

She further averred that LR NKUENE/MITUNGULI /861 was owned by her late husband while the Applicant herein owned two separate parcels namely NKUENE/MITUNGULI /3096 and NKUENE/MITUNGULI /2893 which he disposed and has already moved out; that the Applicant was not entitled to her late husband's parcel of land.

I have considered rival averments by the parties' herein. I have also perused the Court record and documents attached to affidavits filed.

Record show that on 29th February 2012 all beneficiaries were present when the Court confirmed grant.

Shortly after confirmation, the Applicant filed application dated 24th April 2014 seeking revocation of grant and inhibition against LR NKUENE/MITUNGULI /861 on ground that the grant was obtained secretly. The Court directed that the matter be heard by way of *viva voce* evidence.

Each of the parties herein has laid a claim on the deceased's property. The Applicant disowned the Petitioner alleging that she was not married to the deceased and that she never took care of him when he was sick neither did she attend his funeral. The Respondent has also disowned the beneficiaries who are alleged to have attended Court for confirmation of grant.

Entitlement of the parties herein will be ascertained after taking *viva voce* evidence as directed by the Court on 16th June 2014. Awaiting the hearing, it would be in the interest of justice to preserve the deceased's property.

From the foregoing, I find the application herein merited.

FINAL ORDERS

1. The Respondent, her agents, and any other person working under her are hereby restrained from demolishing the deceased's houses, cutting down trees or disposing off deceased's property namely parcel number NKUENE/MITUNGULI/861 or in any manner intermeddling with the deceased's estate pending hearing and determination of this succession cause
2. Inhibition do issue on all dealings in relation to land parcel number NKUENE/MITUNGULI/861 pending hearing and determination of this succession cause
3. This order to be served on Land Registrar Meru.
4. Costs in the cause.

Ruling Dated and Signed at Nairobi this 19th day of November 2018.

.....

RACHEL NGETICH

HIGH COURT JUDGE

Delivered at Meru this 23rd day of November 2018.

.....

JUDGE

IN THE PRESENCE OF

.....COURT ASSISTANT

.....COUNSEL FOR APPLICANT/OBJECTOR

.....COUNSEL FOR RESPONDENT/PETITIONER