REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 2623 OF 2009

IN THE MATTER OF THE ESTATE OF NJUGUNA MWATHI

(DECEASED)

RULING

1. Two applications fall for determination herein. They are dated 8th June 2012 and 28th February 2014.

2. The application dated 8th June 2012 seeks the striking out or dismissal of a summons filed herein by one John Thairu Njuguna, on grounds that a similar application had been filed by the same party in HCSC No. 2804 of 1999 and dismissed on 27th March 1999 by Rawal J. It is argued that the instant application is therefore *res judicata.* It is averred in the affidavit sworn in support of the application that an application to review the order of 27th March 1999 was dismissed on 23rd May 2005 by Koome J.

3. I have been unable to trace a reply to the application, but there is evidence from the averments from the further affidavit sworn on 8th April 2014 by counsel for the applicant in response to a replying affidavit allegedly sworn the respondent that such a copy had been filed.

4. The application dated 28th February 2014 on the other hand, seeks injunctive orders with relation to certain assets which make up the estate of the deceased. The orders are sought pending the hearing and disposal of the application. It is averred in the affidavit in support that the said parcels had been fraudulently subdivided from the original title. I have carefully perused through the file of papers filed herein and I have not come across any response to the application.

5. The two applications that I am called upon to determine are incredibly vague. They are very poorly or badly drafted, in my very humble view, so that the orders sought cannot be granted as prayed.

6. The orders sought in the application dated 8th June 2012 are not clear on what is sought to be dismissed. It is not clear whether it is the entire cause or a summons that is not clearly identified. The prayer talks of the succession cause being an abuse of the process, while the grounds upon which the application is premised refer not to the cause but to a summons being an abuse of court process. The said application is not identified by the dates upon which it was drawn or when it was filed in court. The court is left to speculate as to which application is being talked about. The law does not operate that way. The parties ought to be specific, particular, crystal clear and unambiguous about what they seek in their applications.

7. The application dated 28th February 2014 fares not better. It seeks orders by ways of injunctions that are to last during the pendency of the application. The application upon which the orders sought are dependent is not identified. It is not clear whether the orders are to subsist pending the hearing and determination of the instant application or another. If it is intended that they subsist during the pendency of the instant application, then the instant application will be exhausted automatically upon the delivery of this ruling. Prayers of such nature are only relevant where the orders sought are secondary to a primary prayer for substantive orders. There is no prayer for a substantive order, and therefore the secondary prayer herein cannot stand on its own.

8. I do not find any merit in the two applications and I do hereby dismiss the same with costs. The landed assets are all situated at Githunguri, Kiambu County, none of them are within Nairobi County.

Consequently, the cause shall be transferred to the High Court of Kenya at Kiambu for final disposal.

DATED, SIGNED and DELIVERED at NAIROBI THIS 30TH DAY OF JUNE, 2017.

W. MUSYOKA

JUDGE