



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**SUCCESSION CAUSE NO 2177 OF 2015**  
**IN THE MATTER OF THE ESTATE OF THE LATE AGNES KIRIO TAITI (DECEASED)**  
**RULING**

1. The applicant's application is dated 24<sup>th</sup> May 2016. It is brought under Section 67(1) of the Law of Succession Act and Rules 36 of the Probate and Administration Rules). The applicant seeks the following orders that;

i. Spent

ii. Spent

iii. That pending the hearing of this application interpartes this Honourable Court be pleased to grant a temporary injunction restraining all of the beneficiaries either by themselves, their servants, agents, representatives, and or employees or anyone claiming interest of the remaining properties howsoever, from transferring, interfering in any matter, alienating, charging, offering for sale or disposing off the properties, L.R Aguthi/Gatitu/5371, L.R Aguthi/Gatitu/5372, L.R Aguthi/Gatitu/5373, L.R Aguthi/Gatitu/5375, L.R Aguthi/Gatitu/5376, L.R Aguthi/Gatitu/5349, L.R Aguthi/Gatitu/5250 and L.R Aguthi/Gatitu/5168 or any part thereof pending the hearing and determination of this application inter partes.

iv. That pending the hearing of this application interpartes this honourable court be pleased to issue orders that the petitioner, Ms. Nancy Wangui Taiti collect and receive the estate and doing such acts as may be necessary for the preservation of the same and in particular of collecting income derived from the ballast factory and until further representation be granted.

v. That pending the hearing of this application interpartes this honourable Court be pleased to issue orders to the John Chege a beneficiary of the estate cease intermeddling with the estate of the deceased by collecting income derived from ballast factory .

vi. That this Honourable court be pleased to grant a temporary injunction restraining all of the beneficiaries either by themselves, their servants, agents, representatives, and or employees or anyone claiming interest of the remaining properties howsoever, from transferring, interfering in any matter, alienating, charging, offering for sale or disposing off the properties listed in number 4 or any part thereof pending issuance and confirmation of the grant.

vii. That the court issue a limited grant in the petitioner's name for the purposes of collecting and getting in and receiving the estate and doing such acts as may be necessary for the preservation of the same and in particular of collecting income derived from the ballast factory and until further

representation be granted.

viii. That in the alternative, the court hereby directs that the said income from the ballast factory is deposited in court pending issuance of the confirmation of grant over the deceased.

ix. That this Honourable court be pleased to make such further orders as the interest of justice may require.

x. That the cost of this application be provided for.

2. The application was grounded on the grounds that the deceased died intestate on the 24<sup>th</sup> day of July 2014 at Riamukurwe. The deceased was issued with a grant in Nairobi High Court Succession No. 2 of 1992 giving her a life interest and held some property in trust for her children. Following the hearing of citations issued against some of the beneficiaries, the court directed that Ms. Nancy Wangui Taita and Ms. Irene Wanjiku Karanja do apply for grant of letters of administration by way of petition as the proposed administrators. However, following the said directions, Ms. Irene Wanjiku Karanja has failed to sign the petition despite several reminders by her advocates and as such the delay is causing wastage of the Estate to the exclusion and detriment of the beneficiaries. The petitioners further avers that one of the beneficiaries, Mr. John Chege has been intermeddling with the estate of the deceased and receiving income from the ballast factory despite lacking proper legal capacity to do so. He has also restricted access to the factory and has refused to render accounts of the ballast factory. That unless a limited grant is issued by the court, the estate of the deceased shall continue to go to waste and as such a limited grant ought to be issued for the purposes of collecting, receiving in and doing any acts that are geared towards the preservation of the estate.

3. In their submissions, the applicants submitted on the first issue that the application for injunction was set out under the inherent jurisdiction of the court and under Section 47 of the Law of Succession Act and Rule 73 of the probate rules that affirms that the Court has power to grant injunctive orders to meet the ends of justice. They relied on the case of **The Estate of George M'Mboroki (Deceased) [2008] eKLR** where the court held that "*it holds such intrinsic authority so as to observe the due process of the law, to prevent the abuse of the process, to do justice between the parties and to secure a fair trial between them*". The applicant also relied on the celebrated case of **Giella v Cassman Brown & Co. Ltd (1973) E.A 358** which sets out the grounds for granting an injunction. On the first principle as set out in the case, the applicant submitted that she had established a prima facie case as described in **Mrao V first American Bank & 2 others [2003] KLR, 125**. The applicant submitted that it was evident from the facts tendered in court that part of the estate of the deceased had been sold to third parties and that the 4<sup>th</sup> respondent has been intermeddling in the estate by operating a ballast factory on one of the properties without leave of court and or interim letters of administration to the prejudice of other beneficiaries.

4. It is the applicant's submission that the sale of some of the properties as well as the 4<sup>th</sup> respondents actions amount to intermeddling as stated in Section 45 of the Law of Succession Act. The applicant submitted that the courts gave the effect of the above section in the case of the Estate of **Veronica Njoki Wakagoto (Deceased) 2013 eKLR** where the court stated "*that the property of a dead person cannot be lawfully dealt with by anybody unless such a person is authorized to do so by the law.....the law takes a very serious view of intermeddling and makes it a criminal offence*".

5. The applicant further contends that if the injunction so sought is not granted, there will be irreparable loss and a miscarriage of justice. On this the applicant submitted that the court held in **Ann Wairimu Wachira V Jerioth Wangui Maina and 2 others 2016 eKLR** that the applicant must demonstrate that the loss alleged cannot be compensated by damages. The applicant submitted that the waste and destruction of the property cannot be compensated by way of damages.

On the issue of whether the applicant should be granted the limited grant for the purpose of collecting and preserving the estate, the applicant relied on Section 54 of the Law of Succession Act that provides; "*A court may, according to the circumstances of each case, limit a grant of representative which it has jurisdiction to make, in any of the forms described in the fifth schedule*".

The respondents filed their submissions on 8<sup>th</sup> November 2016 and stated that they did not have any objection to the prayer of granting a temporary injunction as prayed by the applicant. They relied on Section 47 of the Law of Succession Act and rule 73 of the Probate and Administration Rules and wished to have the status quo protected on all these properties pending the determination of the suit.

6. On the second prayer by the applicant the respondents opposed the same citing that the court had directed that the applicant and Ms. Irene Wanjiku Karanja be co-administrators and as such oppose the prayer on the notion that the applicant seeks the limited grant in her own individual capacity. The respondents state that the applicant has not demonstrated to the court by way of evidence the steps she has taken to secure the property.

### **DETERMINATION**

7. I have considered the application in question, the affidavits and the submissions filed and these are the issues for determination.

1. Whether the applicants should be granted a temporary injunction
2. Whether the applicant should be given a limited grant for the purpose of collecting and preserving the estate.

The applicant has rightfully submitted that the principles for granting injunctions have been set out in the celebrated case of **Giella V Cassman Brown & Co. Ltd 1973 EA 358**. In considering the prayers sought by the applicant and the submissions, there does exist a serious issue to be tried, one that forms the subject matter of this suit and in preserving it, would only culminate in meeting the ends of justice as sought by the parties. The applicant seeks an injunction against the beneficiaries so as to preserve the property of the deceased as the prayer in its entirety is not opposed but rather welcomed by the respondents.

8. On the prayers sought by the applicant, for a limited grant for the purposes of collecting and preserving the estate, the respondents opposed the same citing that the applicant and the 1<sup>st</sup> respondent were appointed by the court as co-administrators to the estate of the deceased and hence no need for such prayers. I note that the court directed that the applicant and the 1<sup>st</sup> respondent were to petition for letters of administration to which end the 1<sup>st</sup> respondent has not signed the requisite petition as required. The two are co-administrators yet no confirmation or declaration has been made by this court. The applicant seeks a limited grant for purposes of collecting and preserving the estate of the deceased to which end the court is yet to grant any administrative powers to the beneficiaries. The petitioner has applied for a limited grant ad colligenda bona.

9. With regard to the actions of John Chege, intermeddling is expressly prohibited under the Law of succession Act. Section 45 provided as follows,

***‘No intermeddling with property of deceased person***

***(1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person’***

The respondents submitted that the 4<sup>th</sup> respondent was gifted part of the land on which the ballast factory is built on. They submitted that the said factory was built by the 4<sup>th</sup> respondent with his own money thus his actions cannot amount to intermeddling. The respondent did not submit any further documentation to prove that the same was gifted to him. The provision of section 45 apply to the entirety of this proceeding.

10. These are the Court’s orders in this application ;

i. An injunction shall issue restraining all of the beneficiaries either by themselves, their servants, agents, representatives, and or employees or anyone claiming interest of the remaining properties howsoever, from transferring, interfering in any matter, alienating, charging, offering for sale or disposing off the properties, L.R Aguthi/Gatitu/5371, L.R Aguthi/Gatitu/5372, L.R Aguthi/Gatitu/5373, L.R Aguthi/Gatitu/5375, L.R Aguthi/Gatitu/5376, L.R Aguthi/Gatitu/5349, L.R Aguthi/Gatitu/5250 and L.R Aguthi/Gatitu/5168 or any part thereof pending the hearing pending the filing of the petition and its hearing thereof.

ii. The petitioner, Ms. Nancy Wangui Taiti shall collect and receive the estate as may be necessary for the preservation of the same..

iii. John Chege a beneficiary of the estate shall cease from intermeddling with the estate of the deceased by collecting income derived from ballast factory .

iv. That the court issue a limited grant in the petitioner's name for the purposes of collecting and getting in and receiving the estate and doing such acts as may be necessary for the preservation of the same and in particular of collecting income derived from the ballast factory and until further representation be granted.

v. That in the alternative, the court hereby directs that the said income from the ballast factory is deposited in court pending issuance of the confirmation of grant over the deceased's estate.

vi. The limited grant shall lapse in 60 days after which the parties are to file their proposed affidavits of distribution within 45 after the said lapse. Mention in 14 days thereafter.

No cost as to orders due to the nature of the matter.

Dated, signed and delivered this **30<sup>TH</sup>** day of **June** 2017.

**R. E. OUGO**

**JUDGE**

In the presence of;

***Mr. Kibet holding brief for Mr. Muriethi For the Applicant***

***Absent For the Respondent***

***MS. Charity Court Clerk***