



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 2207 OF 2004

IN THE MATTER OF THE ESTATE OF DOMINIC KINUTHIA NUNWA alias KINUTHIA NOONWA

HANNA MURUGI KIMANI KINUTHIA.....1ST APPLICANT

VERONICA GATHONI NGUGI.....2ND APPLICANT

PETER NJUGUNA.....3RD APPLICANT

VERSUS

NANCY WAMAITHA.....1ST RESPONDENT

VIRGINIA WAMBUI.....2ND RESPONDENT

RULING

1. The application before this court is dated 24th November 2016 brought under orders 51 Rule 1, 40 Rules 1,2,3 and 4 of the Civil Procedure Rules 2010, Section 1A, AB and 63 (c) (e) of the Civil Procedure Act Cap. 21 Laws of Kenya. The applicants are seeking the following orders;

i. That this Honourable court be and is hereby pleased to issue an order of temporary injunction to prevent the 1st and 2nd Respondent and or administrators of the estate either by themselves, their agents, servants, proxies and or employees from interfering in any way either by demolishing, disposing, alienating, selling or evicting the applicants from the deceased matrimonial home/house located on L.R No. 13160 Kahawa pending hearing and determination of this application inter-parties.

ii. That the OCS Kiamumbi Police Station, Chief Kahawa West, Kiwanja Sublocation do assist in implementing the orders.

iii. That this Honourable court be and is hereby pleased to issue an order of injunction to prevent the 1st and 2nd Respondents and or administrators of the estate either by themselves, their agents, servants, proxies and or employees from interfering in any way either by demolishing, disposing, alienating, selling or evicting the applicants from the deceased matrimonial home/house located on L.R No. 13160 Kahawa pending hearing and determination of the case herein.

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

2. The applicants' application is pegged on grounds that they are part of the beneficiaries of the deceased estate and that they objected to the mode of distribution adopted by the administrators which later resulted into a revocation of the grant issued by the court. The applicants further state that the matter was referred to mediation which in turn failed leading to the 1st and 2nd respondent using extra judicial means to evict the applicants from the deceased matrimonial home. They submitted that the matrimonial home belonged to all three wives of the deceased. They aver that the action of threatening to demolish and or evict the occupants of the matrimonial home is not only selfish but tainted with malice and intended to disadvantage and or intimidate other beneficiaries of the estate.

3. Peter Njuguna, having authority from his co-applicants swore a supporting affidavit in support of the application dated 24th November 2016. In his affidavit, the applicant aver that the deceased had three wives and several beneficiaries and before his demise the deceased had placed them in the house having divided the house into rooms for each beneficiary. That they received summons from the area's assistant Chief, which he honored. The respondent's informed him of their intentions to demolish and relocate the house elsewhere. The talks broke down and as a result the respondent resulted to extra judicial means to evict the beneficiaries. The applicant avers that the orders so prayed are in an attempt to preserve the estate pending the final determination of the court.

4. The respondents filed a replying affidavit on 21st December 2016 stating that they are the administrators of the estate and that Peter Njuguna is a son to Hannah Murugi, a daughter in law to the deceased and thus not an entitled as a beneficiary to the estate as he can only get his inheritance through his mother. They went on and stated that there is no written consent from the 1st and 2nd applicants authorizing the 3rd applicant to act on their behalf. That the deceased did not prior to his demise allocate the matrimonial home to the applicants as alleged. That the applicant was given a one roomed house inside the compound to live with his family and as such he has never lived in the matrimonial home. He should therefore not be entitled to the reliefs sought.

5. I have read the application and its accompanying affidavits and the following issues are to be determined;

i. Whether the applicants are entitled to an injunction as prayed pending the hearing and determination of this suit.

The applicants have sought an injunction restraining the respondents from demolishing or disposing off any interest in the matrimonial home pending the hearing and determination of this application. They also seek an injunction restraining any disposition in the matrimonial property pending the hearing and determination of the suit. This court will grant an injunction on the following grounds;

i. If the applicant has demonstrated that they have a prima facie case with a high probability success

ii. That the applicant stands to lose and such lose cannot be compensated by way of damages if the injunction is not granted.

iii. That the balance of convenience tilts in favour of the applicant.

The demonstration of a prima facie case is paramount to granting an injunction. The court in *MRAO Vs First American Bank of Kenya Limited & 2 others* (2003) KLR 125, described it as follows,

“a prima facie case in a Civil Application includes but is not confined to a ‘genuine and arguable case’. It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter”

6. The question that then arises is whether the applicants have established a prima facie case with a high probability of success. The applicants have adduced evidence to the fact that the deceased had three wives

and that the beneficiaries were to file their agreed mode of distribution as per Justice. L. Kimaru's ruling dated 26th November 2010. There thus exists a clear conflict when the status of the subject matter in question changes. The second limb is whether the applicants will suffer irreparable damages which cannot be compensated by way of damages should this court not grant the injunction. The change of the status of the property in question may occasion a loss to the beneficiaries in question. It would be in the interest of justice to grant the prayers as sought so as to preserve the interests of all the parties in this suit.

I therefore grant prayer 3, an order of injunction shall issue to prevent the 1st and 2nd Respondents and or administrators of the estate either by themselves, their agents, servants, proxies and or employees from interfering in any way either by demolishing, disposing, alienating, selling or evicting the applicants from the deceased matrimonial home/house located on L.R No. 13160 Kahawa pending hearing and determination of the case herein. The OCS Kiamumbi Police Station, Chief Kahawa West, Kiwanja Sublocation shall assist in implementing the orders. Parties to file their affidavits on the mode of distribution within 45 days of the ruling and to take a date at the registry for directions on the same. since this is a family matter there shall be no orders as to costs.

Dated, signed and delivered this **23rd** day of **June** 2017.

R. E. OUGO

JUDGE

In the presence of;

Applicants in person

Mr. Nganga holding brief for Mr. Jessie For the Respondents

MS. Charity

Court Clerk