



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 177 OF 2000

In the Matter of the Estate of M' Ikiugu M' Mwirichia (Deceased)

JOYCE NKATHA KIUGU.....PETITIONER

Versus

JUSTUS THIORA KIUGU.....1ST OBJECTOR

DAVID KUBANIA.....2ND OBJECTOR

JULIUS KAYHURIMA.....3RD OBJECTOR

AYUB MWITI.....4TH OBJECTOR

EDWARD KIUGU.....5TH OBJECTOR

STEVE MURETI KIUGU.....INTRESTED PARTY

RULING

Stay of implementation of grant

[1] The significant relief sought in the Chamber Summons application dated 18th April 2017 is stay of execution of the ruling of the court delivered on 21st March 2017 pending the intended appeal on the said ruling. The application is expressed to be brought under [sic] 49, 73 of P&A Cap 16 Laws of Kenya and is supported by the Affidavit of Justus Thiora Kiugu and other grounds argued during the hearing. The core arguments by the Applicant are:

- (a) That the Applicant has filed a notice of appeal
- (b) That his appeal has overwhelming chances of success
- (c) That the ruling was contrary to the Court of Appeal decision herein and that by executing the said ruling, he will suffer loss. He argued that the petitioner has already started to enforce the ruling by requiring all tenants to pay the rent to the petitioner
- (d) That by dint of the Court of Appeal decision, the petitioner ceased from being an administrator

of this estate and became a trustee of the beneficiaries of estate in equal shares. He labored to explain the difference between these two legal terms and why the ruling of the court should be stayed.

[2] The Petitioner and the interested party opposed the application. Each filed a replying affidavit. Mr. Arithi, counsel for the Petitioner argued that no proper notice of appeal was lodged in court. In any case, he argued that the intended appeal is a frivolity aimed at only causing further delay in this matter. Mr. Arithi accused the Applicant of filing a myriad of applications in order to prevent the petitioner from benefiting from the estate. He submitted that the administrator of the estate should be allowed to administer the estate in accordance with the grant. He stated that the designated estate account was communicated to the tenants so that they can pay rents of the estate therein. But the Applicant stopped them from so paying the rents from the estate property. He labeled the Applicant as an intermeddler who should be dealt with in accordance with section 45 of the Law of Succession Act. Mr. Mwirigi for the Interested Party argued associated himself with the submissions by Mr. Arithi but added that this court is merely executing the decision by the Court of Appeal on distribution of the estate. He contended that the Applicants are just impeding the administration of the estate as per the order by the Court of Appeal. He also submitted on the order by Njoroge J which he said did not bind this court.

DETERMINATION

[3] I have carefully considered this application and the rival submission by the parties. I am of this view. The core consideration here is whether the Applicants will suffer any or any substantial loss unless the ruling of 21st March 2017 is stayed? I must ask myself whether there is any sufficient cause to stay the said ruling. The argument by the Applicants is that the ruling is prejudicial to the decision of the Court of Appeal which was delivered on 12th March 2015 at Nyeri and so unless it is stayed they will suffer loss. I fall back to the record; the Court of Appeal ordered *inter alia* that:-

“... the decree or certificate of confirmed grant ensuing from the judgment dated 28th November 2013, be and is hereby set aside and all the assets of the deceased stated here below and others residue to be registered in the name of his widow Joyce Nkatha Kiugu to hold in trust for herself and the deceased children in equal shares...”

The ruling of this court delivered on 21st March 2017 *inter alia* ruled:

“Consequently, this estate shall be administered in accordance with the grant herein as was confirmed by the court of appeal. As a consequence all the applications herein are deemed to be determined to the extent stated in the orders above...”

You will notice the path I have taken is quite deliberate so as to avoid making statements or comments or expressing opinion which may prejudice the intended appeal. I will, therefore, say just enough. It suffices to state that Mr. Arithi and Mr. Mwirigi, learned counsels for Petitioner and the Interested Party respectively, correctly stated that the Ruling delivered by this court on 21st March 2017, was merely in execution of the grant arising from the decision of the Court of Appeal delivered on 12th March 2015. In my considered opinion there is nothing to stay as orders being sought are tantamount to staying administration of this estate as was ordered by the Court of appeal- such would be usurpation of the powers of the Court of Appeal.

[4] Having said that, I appreciate the attempt by the Applicants to make out the difference between the terms administrator and trustee. But there appears to be little point in trying to classify the Petitioner as either the administrator of the estate or a trustee thereto as the Petitioner is both the administrator and trustee of the estate and trust property- a situation that is perfectly recognized by the Law of Succession Act; for instance see section 84. Of greater significance, however, is that, in law the property of the estate as well as the trust vests in the Petitioner who shall administer it in accordance with the grant issued pursuant to the decision of the Court of Appeal. Section 79 of the Law of Succession Act and also law on trust are apt guide here. Accordingly, where the same person is the administrator and trustee, such

classification of the Petitioner as either an administrator or trustee as has been proposed by the Applicants becomes futile. I must however state that these squabbles I am seeing are but a misconception on the part of the Applicants that they can alter the decision of the Court of Appeal through a myriad of applications before this court and others. As a matter of fact, parties should just enforce and comply with the decision of the Court of Appeal and all shall be well. The Petitioner should simply apply to be registered by transmission in respect of all the properties as was ordered by the Court of Appeal and then exercise all the powers vested in her by law as administrator and trustee. For clarity, the Court of Appeal ordered that:-

...all the assets of the deceased stated here below and others residue to be registered in the name of his widow Joyce Nkatha Kiugu to hold in trust for herself and the deceased children in equal shares...

The upshot of this analysis is that there is no loss or prejudice that will be suffered by the Applicants in the enforcement of the grant herein while they take a journey to the Court of Appeal in quest for redress of their grievances. Accordingly, I dismiss the application dated 18th April 2017 with costs to the Petitioner and Interested Party. It is so ordered.

Dated, signed and delivered in open court at Meru this 19th day of September 2017

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F. GIKONYO

JUDGE

In the presence of:

Mr.Mutegi advocate for petitioner

Mr. Mutungi advocate for interested party

Justus Thiora Kiugu – present

All Objections present

Interested party present.

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F. GIKONYO

JUDGE