



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MURANG'A**

**SUCCESSION CAUSE NO 33 OF 2017**

***IN THE MATTER OF THE ESTATE OF HANNA WANJIRU MAINA ALIAS WANJIRU MAINA,  
DECEASED***

**1. FRANCIS KIHORO MAINA**

**2. FRANCIS GICHUHI KAMAU MAINA**

**3. PETER MAINGI MAINA.....APPLICANTS**

**VERSUS**

**DAMARIS WANJIRU MAINA....ADMINISTRATOR/RESPONDENT**

**PRELIMINARY RULING**

1. The substantive matter pending disposal herein is the Applicants' summons dated 11/09/2017 for revocation of grant. Upon that summons the court on 18/09/2017 granted *ex parte* an interim injunction whose main purpose was to preserve the assets of the estate pending hearing *inter partes* of that prayer for interim injunction. That prayer for interim injunction (No 7 in the summons) is yet to be heard *inter partes*.

2. The Administrator not only filed a replying affidavit in response to the summons for revocation; she also filed her own summons dated 29/10/2017 in which she sought injunctive reliefs against the Applicants in respect to the land comprising the Deceased's estate (prayers 2 and 3). She also sought in prayer 4 an order that the Applicants do account for and pay "all proceeds and bonuses realized from the harvest and sales from tea bushes on the land, and any other revenue realized from activities being carried out" in the land into a joint account.

3. There is also a prayer (No 5 in the application that is rendered as follows –

"5. That for purposes of preservation of the subject-matter herein the order made by (this court) on 18/09/2017 be reviewed to allow for a joint management of land parcel No LOC 19/KIAWAMBOGO/204 between the (Administrator) personally or through her appointed agent and the (Applicants) until hearing and determination of this cause.

OR

"In the alternative a joint manager be appointed by court to manage the affairs of land parcel No LOC 19/KIAWAMBOGO/204 until hearing and determination of this cause".

4. The Applicants filed a replying affidavit on 06/11/2017 in response to the summons dated 19/10/2017.

5. On 04/12/2017 I heard the aforesaid prayer No 5 of that summons. I have read the supporting and replying affidavits. I have also considered the submissions of the learned counsels appearing.

6. It turns out that the Applicant's claim in the Deceased's estate (which comprised only land parcel No LOC 19/KIAWAMBOGO/204) is founded on trusts, their claim being that the Deceased (who was their step-mother having been the co-wife of their mothers), and who is the Administrator's grandmother, was registered as proprietor of the land in trust for the entire family of their father (the Deceased's and their mothers' husband). It is apparent that claim cannot be properly and fully litigated in these limited succession proceedings, and ought to be litigated before an appropriate court through an appropriate civil action with appropriate pleadings. A civil court in such an appropriate action would then give appropriate orders for preservation of the property pending disposal of the suit.

7. In the circumstances therefore I will direct that the Applicants do institute an appropriate civil action and seek there appropriate orders for preservation of the parcel of land (which is already registered in the name of the Administrator). They must do so within thirty (30) days of delivery of this ruling, upon which this court will give further directions regarding the summons for revocation of grant. The interim injunction granted on 18/08/2017 shall remain in place until the next date given for mention of this matter.

8. In default of instituting appropriate civil proceedings the aforesaid interim injunction granted on 18/09/2017 shall stand vacated.

9. Costs shall be in the cause.

**DATED AND SIGNED AT MURANG'A THIS 21<sup>ST</sup> DAY OF DECEMBER 2017**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT MURANG'A THIS 22<sup>ND</sup> DAY OF DECEMBER 2017**