



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

SUCCESSION CAUSE NO. 158 OF 2014

In the matter of the Estate of ALFRED KAMURE MBINDU (Deceased)

ANASTASIA IGOKI.....PETITIONER (DECEASED)

BETWEEN

VERONICA KERE MBINDU.....1ST APPLICANT

DAVID NTHIGA NJERU.....2ND APPLICANT

PATRICK NGARI.....3RD APPLICANT

VERSUS

CECILIA MUTHONI KAMURI.....1ST RESPONDENT

JENIFFER KARAUKI KAGWARI.....2ND RESPONDENT

DOMINIC MUCHIRI.....3RD RESPONDENT

R U L I N G

1. This is a ruling on the application dated 2/05/2017 seeking for a temporary injunction to restrain the respondents from developing, transferring trespassing and alienating L.R. Evurore/Nguthi/3727, 3728, 3729 and 3730 pending hearing and determination of the summons for revocation of grant. It also seeks for orders for inhibition of any dealings with the same parcels named in the application.

2. The application was supported by the affidavit of Veronica Kere Mbindu the 1st applicant. It is deposed that Veronica has the authority of the 2nd and 3rd applicant to swear the affidavit. She states that the deceased has three wives and that the administrator was the 2nd wife. She failed to disclose that the deceased had two other wives namely Veronica Kere Mbindu the 3rd wife (the applicant herein) and the 1st wife Mergery Muthoni Mwendano the mother of the 2nd applicant.

3. The applicant further states that the estate was distributed among the administrator, her daughter the 1st respondent among others leaving the 1st and 2nd houses disinherited. The respondents have been harassing the applicants who reside on the land with a view of evicting them from the land. The deceased's land L.R. Evurore/ Nguthi/3727, 3728, 3729 and 3730. Titles have been issued to the

administrator and the respondents.

4. The applicants are apprehensive that they will be evicted from the land and there is risk of the respective parcels of land being disposed of. They have filed summons for revocation of grant which may be rendered useless should the land parcels be alienated by the respondent.

5. The application was opposed by the respondent relying on their respective affidavits. It was stated by the 1st respondent who is a daughter of the administrator that her mother was legally married to the deceased in a monogamous union which does not give room for other marriages. The 1st applicant says she is the mother of the 2nd applicant while and the 3rd applicant is the nephew of the deceased. The respondent denies that the applicants are beneficiaries in the estate of the deceased.

6. The 1st respondent raised the issue of the application not being properly before the court in that the administrator has not been substituted since her death. The respondent states that the respective land parcels were transferred to the administrator whose personal representatives have not been appointed to defend her interests. The 1st respondent states that she is the registered owner of Evurore/Nguthi/3730 transferred to her by the respondent.

7. The 3rd respondent who is said to be the husband of the 3rd respondent opposes the application arguing that he has been wrongly sued since he is not a beneficiary to the estate. He states that the application lacks merit and should be struck out.

8. Before looking at the merit of this application, it is imperative that its competence be dealt with.

9. The parties do not dispute that the administrator in this case is deceased. She is named as the respondent in the summons for revocation of grant although the applicant admit on the body of the application that she is deceased.

10. In this application for restraining orders, the administrator is not a party although this application is based on the summons for revocation. All actions giving rise to this application were those of the administrator. This application is meant to preserve the estate and to protect the rights of the applicants as beneficiaries.

11. An administrator is the person with “powers of representation” in the estate of the deceased as described in Section 3 of the Law of Succession Act.

12. Once appointed an administrator, all the powers in Section 85 of the Act apply to the person. He/she is the main driver in a succession cause with enormous powers and responsibilities. Upon his/her death, the administrator requires to be substituted for business to proceed in any succession cause.

13. In this cause, the estate has already been distributed and titles for the respective parcels issued in various names. The applicants have now entered the arena to claim their interests which is their legal right.

14. The deceased administrator is being accused of failing to involve the applicants in this cause and of disinheriting them. Now that she is deceased, the administrator ought to be substituted so that business can resume in these proceedings.

15. There is no application that can be heard in a succession cause without an administrator and most importantly an application for revocation of grant. Substitution should have preceded or moved simultaneously with the summons for revocation.

16. The facts presented by the parties in this application are that the applicants are beneficiaries in this estate subject to proof of their claim.

17. Although the 1st respondent denies the claim, the applicants have a right to be heard. She admits in her replying affidavit that the applicant live on the land but does not explain how they got there. The estate has already been distributed but all is not lost for the applicants. The applicants' claim in the estate can only be sustained only if the relevant assets are preserved pending pursuit of the applicants of their interests.

18. For these reasons I find it appropriate for this court in the interest of justice to preserve the estate of the deceased in the following terms:-

(a) That orders of prohibition do issue against L.R. Evurore/Nguthi/3727, 3728, 3729 and 3730 pending substitution of the administrator and pending amendment of and disposal of the summons for revocation.

(b) That the applicants do file the application for substitution within 30 days.

(c) That all parties named in the certificate of confirmation be involved in the summons for revocation.

(d) That the application dated 2/05/2017 is hereby struck out for being incompetent.

(e) That each party meets its own costs.

19. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 19TH DAY OF DECEMBER, 2017.

F. MUCHEMI

J U D G E

In the presence of:-

Ms. Muthoni for Lee Maina for respondent

2nd and 3rd respondents present