



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT EMBU**

**SUCCESSION CAUSE NO. 73 OF 2002**

***In the matter of the Estate of RICHARD MURATHI NGARI (Deceased)***

**DICKSON BUNDI NJAGI.....APPLICANT**

**VERSUS**

**JAMLECK KIURA MURATHI.....RESPONDENT**

**RULING**

1. This is a ruling on summons (general) dated 6/04/2017 seeking for a temporary injunction against the respondent by restraining him, his servants, employees from alienating, transferring or otherwise interfering in anyway with L.R. No. Baragwi/Raimu/490/11 or Kianyaga/Market/11 until the hearing and determination of the main suit. It also seeks for orders of inhibition to be issued against title No. Baragwi/Raimu/490/11 or Kianyaga/Market/11.
2. The application is supported by the affidavit of Dickson Bundi Njagi the applicant. He deposes that the grant was confirmed on 4/02/2010 bequeathing the suit plot to the respondent whereas it was owned by the deceased and 4 others. The respondent failed to disclose to the court the issue of co-ownership of the plot.
3. The respondent is said to have opened a new green card for the plot and taken it all for himself.
4. The respondent filed grounds for opposition dated 15/06/2017. It was argued that the summons is defective, misconceived, bad in law and an abuse of the due process of the court for citing the wrong provisions of the law. The matters raised in the summons are *res judicata* having been determined by a court of competent jurisdiction. It is an attempt to bypass by way of review/appeal the lawful orders of this court. The respondent failed to disclose that there is an existing appeal on the same matter Kerugoya ELC Appeal No. 5 of 2015.
5. The applicant filed written submissions in support of the summons arguing that it is lawful to issue an injunction in a matter of this nature. He also relied on the case of ***GIELLA VS CASSMAN BROWN LTD [1973] EA 358*** in regard to the principles applicable in granting injunctions.
6. The summons are brought under Sections 49 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules. The provisions of Section 49 deal with the territorial jurisdiction of magistrates which may be delegated by the High Court. I find this provision misplaced in that this summons is before the High Court in this cause. The issue of territorial jurisdiction by magistrates does not therefore arise.
7. Rule 73 grants the court inherent powers to make such orders as may be necessary for the ends of

justice to prevent abuse of the process of the court. This application is intended to preserve the Plot No. Kianyaga/Market/11 pending hearing and determination of the summons for revocation of grant dated 6/04/2017. The issue of competency of the application was raised by the respondent. this must be determined before the court goes to the merits of the summons.

8. The granting of injunctive orders is provided for under Order 40 of the Civil Procedure Rules. Rule 63 of the Probate and Administration Rules imports certain provisions of the Civil Procedure Act that are applicable in succession cases. Order 40 is not one of those provisions. The application is purely seeking injunctive orders. Section 49 and Rule 73 relied on by the applicant have nothing to do with the summons before the court. The application is therefore brought under the wrong provisions of the law and is also misplaced considering the provisions the laws of succession Act and cannot therefore be entertained.

9. The respondent discloses that there is a pending appeal in ELC court Kerugoya regarding the same property which has not been denied. Basically, the ELC court is possessed of jurisdiction to determine land disputes. The applicant is claiming a share of land allegedly owned by the deceased and other people. It appears that litigation on the property has been going on in other cases. The respondent states that the matter is *res judicata* which the applicant has not denied.

10. It is my finding that the orders sought in this summons cannot issue for the foregoing reasons.

11. The application dated 6/04/2017 is incompetent, bad in law and an abuse of the due process of the court. It is accordingly dismissed with costs.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 13TH DAY OF DECEMBER, 2017.**

**F. MUCHEMI**

**J U D G E**

**In the presence of:-**

**Respondent present**