



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA

SUCCESSION CAUSE NO. 89 OF 2015

IN THE MATTER OF THE ESTATE OF BERANABA MURIUKI JOSEPH (DECEASED)

AND

MARY WAMBUI KAHIHIA.....ADMINISTRATRIX/APPLICANT

VERSUS

JOSEPH GITHINJI MURIUKI.....1ST RESPONDENT

PETER KARANI KARIRU.....2ND RESPONDENT

ESTHER NJOKI MURIUKI.....3RD RESPONDENT

RULING

1. MARY WAMBUI KAHIHIA, the applicant herein has taken out Summons dated 23rd July, 2015 under *rule 49* and *73* of **Probate and Administration Rules** for the following orders:

i. That this matter be certified urgent and be heard on priority basis due to its urgency.

ii. That pending the hearing and determination of this application inter-parties there be an order of temporary injunction restraining the respondents by themselves servants, agents or anyone claiming through them from entering, wasting, constructing, demolishing, evicting, cultivating, selling, charging or in any way unlawfully interfering with the applicant's quiet possession and occupation of the estate comprised on L.R. NO. MWEA/NGUCWI/640 previously L.R. MWEA/NGUCWI/692 and MWEA/NGUCWI/693.

iii. That an order be issued cancelling the registration of the respondents as the registered proprietors of L.R. No. MWEA/NGUCWI/640 and the County Land Registrar Kirinyaga County be ordered to rectify the register/records and restore the land in the names of deceased, Baranaba Muriuki Joseph pending the determination of this cause.

iv. That a prohibitory order be issued to preserve the estate of the deceased comprised in L.R. No. MWEA/NGUCWI/640 pending the hearing and determination of this cause.

v. That the Hon. Court be at liberty to order D.C.I.O. Kirinyaga County to investigate the possible involvement of the respondents in criminal acts of fraud, forgeries and unlawful interference with the estate of the deceased in effecting transfer of the entire land to their names.

vi. That the Hon. Court be at liberty to make other appropriate orders in restoring and preservation of the estate of the deceased.

vii. That the costs of this application and all costs and expenses incidental to effecting the orders sought in this application be paid by the respondents.

2. The application is uncontested despite service perhaps in view of blatant acts of fraud committed either by the Respondents or their agents with a view to unlawfully obtaining the estate herein through illegal and unprocedural means. This is quite apparent from the annexures particularly exhibit “M.W.K. 6” that shows that the transmission of the estate herein was effected in favour of the 1st and 2nd respondents herein was on the basis of a clear fraud as demonstrated by exhibits “M.W.K. 7” and “M.K.M. – 15”. The exhibits show that the succession cause used from Nyeri High Court related to a different deceased person. There can never be a defence or excuse for such blatant actions and that may explain why the respondents despite service never contested the application now before court. I find that the entire purported transmission was riddled with irregularities and voidness. The same is a nullity and is of no legal effect.

For the above reasons, this Court shall allow the application dated 23rd July, 2015 on the following terms:

a. That the registration of the respondents as the proprietors of that parcel of land known as **L.R. MWEA/NGUCWI/640** be cancelled and the County Lands Registrar is directed to rectify the register/records and restore the previous **L.R. Nos. MWEA/NGUCWI/692** and **693** in its place and further restore the names of the deceased Baranaba Muriuki Joseph pending the proper distribution of the estate to the appropriate beneficiaries to be determined in this cause.

b. Upon effecting of the above order, a prohibitory order shall be placed on the register and/or title to preserve the estate comprised in **L.R. No. MWEA/NGUCWI/692** and **693** pending the hearing and determination of this cause.

c. The respondents are condemned to pay costs of this application and all other expenses incidental to effecting the above orders.

This Court declines to direct D.C.I.O. Kirinyaga County to take action or investigate the criminal acts that may have been committed because no material was placed before the Court to show that the C.I.D. have failed to act despite reports being made to them.

The applicant is also directed to expedite the finalization or determination of this cause by moving this Court appropriately. That is the ruling of this Court and it is so ordered.

Dated and delivered at Kerugoya this 18th day of February, 2016.

R. K. LIMO

JUDGE

18.2.2016

Before Hon. Justice R. Limo J.,

Court Assistant Willy Mwangi

Parties absent

No appearance

COURT: The ruling is dated, signed and delivered in the open court in the absence of parties and their counsel as the date for ruling was given in their presence.

R. K. LIMO

JUDGE