



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MILIMANI
SUCCESSION CAUSE NO. 2211 OF 2007
IN THE MATTER OF THE ESTATE OF DAVID KINYANJUI KAGIRI (DECEASED)

RULING

1. The proceedings in this matter relate to the estate of David Kinyanjui Kagiri, who died on 27th June 2007.
2. Representation to his estate was obtained on 25th June 2008 by Ruth Mugure Kinyanjui and Michael Kagiri Kinyanjui, in their respective capacities as widow and son of the deceased. He was expressed, in the petition lodged at the registry, to have had died a monogamist, survived by the widow and six daughters and three sons. He was said to have died possessed of Ngong/Ngong/33879.
3. Twin summonses for revocation of grant were lodged at the registry by Rebecca Wangari Kinyanjui and Veronica Wakanyi, claiming to be widow and daughter, respectively, of the deceased. In the end, the court ruled on 15th December 2011 that Rebecca Wangari Kinyanjui and her children were widow and children within the meaning of section 3(5) of the Law of Succession Act, Cap 160, Laws of Kenya. The application by Veronica Wakanyi was dismissed. The grant made to Ruth Mugure Kinyanjui and Michael Kagiri Kinyanjui was revoked and a fresh grant made to Ruth Mugure Kinyanjui, Rebecca Wangari Kinyanjui and Anne Njeri Maina.
4. The summons before me for determination is dated 17th December 2014 and is brought at the instance of Rebecca Wangari Kinyanjui and her children. That would be to say by two of the administrators and two others, against the third administrator, Ruth Mugure Kinyanjui. It seeks three principal orders: that there be maintenance of *status quo* as at the date of the demise of the deceased with respect to Ngong/Ngong/33879 pending the completion of administration, that illegal structures purportedly constructed by Ruth Mugure Kinyanjui on Ngong/Ngong/33879 be demolished at her cost and that Ruth Mugure Kinyanjui be ordered to account for all the money that she has received from renting out part of Ngong/Ngong/33879 and for the sale of timber harvested from the same.
5. The affidavit in support of the application was sworn on 17th December 2014 by Rebecca Wangari Kinyanjui. Her case being that as at the date of the demise of the deceased she occupied a permanent house on Ngong/Ngong/33879 and cultivated a portion of the land. Her co-wife

allegedly occupied another part of the subject land. She is said to have constructed rental houses just outside the house of Rebecca Wangari Kinyanjui and cut down all the mature trees on the land and used the same to construct the houses. She is also said to have leased out a huge part of the land to outsiders who are now carrying out various agricultural activities on it. She is said to have declined to desist from engaging in these activities and the deponent asserts that she ought to account for them.

6. Ruth Mugure Kinyanjui responded to the application by her affidavit sworn on 14th April 2015. She asserts that the house now occupied by Rebecca Wangari Kinyanjui was actually her matrimonial home with the deceased, to whose construction she contributed. She was chased away from it by the deceased, who thereafter lived in it alone before he died. She came back after his murder. She was later driven out of the home by Rebecca Wangari Kinyanjui, allegedly assisted by her brother, who was a senior officer in government. She asserts that Rebecca Wangari Kinyanjui had been chased away from the land by the deceased long before the former died. The provincial administration had apportioned the property between the three houses of the deceased and approved the developments that Rebecca Wangari Kinyanjui is complaining about. She accuses Rebecca Wangari Kinyanjui of failing to cooperate so as to apply for confirmation of the grant made to them on 15th December 2011.
7. I directed on 21st April 2015 that the said application be disposed of by way of written submissions. The parties complied with those directions. I have before me the applicants' written submissions dated 12th May 2015 filed herein on even date; the respondents' written submissions are dated 26th May 2015 and were filed herein on even date.
8. When Kimaru J. determined the revocation applications that I referred to in paragraph 3 of this ruling, and revoked the grant of 25th June 2008 and appointed new administrators, it was directed that the new administrators should file an application for confirmation of the grant made on 15th December 2011 within thirty (30) days of the date of the ruling. The parties did not comply with the order. None of the administrators filed for the confirmation of the grant, what was filed instead is the application now before me, which clearly does not pray for the confirmation of the grant of 15th December 2011.
9. When the court made the said order on 15th December 2011, it was not trifling. It was not acting in vain. It was making an order to be complied by the parties. The said order has not been reviewed, nor appealed against or reversed. It is still in force and awaiting compliance. Parties cannot choose which orders to obey, and which ones to disregard.
10. I will not rule on the application 17th December 2014. It is filed in abuse of court process so long as the order of 15th December 2011, directing the filing of a summons for confirmation of grant, has not been complied with. The said order must be complied with first before any other application is filed. In any event, the primary objective of initiating a succession cause is to have the assets distributed, which obviates such applications as the one dated 17th December 2014.
11. The orders that I feel compelled to make in the circumstances are as follows:-

a. That the application dated 17th December 2014 is hereby dismissed with no order as to costs;

b. That the parties hereto must comply with the order made on 15th December 2011 by Kimaru J. directing them to file for confirmation of grant within thirty (30) of the order; and

c. That the order of 15th December 2011 is hereby extended by thirty (30) days, default in complying with shall result in the grant of representation made on 15th December

2011 being automatically revoked upon expiry of thirty (30) days.

DATED, SIGNED and DELIVERED at NAIROBI this 12TH DAY OF FEBRUARY, 2016.

W. MUSYOKA

JUDGE