



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO. 89 OF 2002

IN THE MATTER OF THE ESTATE OF LATE DAVID KARIUKI GITHENYA (DECEASED)

CHARLES WAHOME KARIUKI..... APPLICANT

AND

ROSE WANJIRU KARIUKI.....RESPONDENT

RULING

1. The applicant filed an application dated the 18th June, 2012 under a Certificate of Urgency under the provisions of Rules 49 and 73 of the Probate & Administration Rules and sought the following orders;
 - i. Spent
 - ii. That the Title deeds for parcels of land Registration No. Thengenge/Karia/4206, 4207 and 4208 be cancelled and consolidated into one title deed in the respondents name as per the Certificate of Confirmed Grant order issued on 6/12/2004.
 - iii. That a restriction order be issued on Thengenge/Karia/4206,4207 and 4208 pending the hearing and determination of this application inter partes.
 - iv. That the costs of this application be provided for.
2. The application is premised on the grounds on the face of the application and the supporting affidavit made by CHARLES WAHOME KARUIKI dated the 18th June, 2014.
3. Upon perusal of the court record this court is satisfied that the hearing date for the application was fixed at the registry by consent of both Counsels acting for the parties herein; at the hearing hereof the application therefore proceeded unchallenged as both the respondent and her advocate were absent.

APPLICANTS SUBMISSIONS

4. The respondent is the mother of the applicant and both are administrators of the estate of the deceased; the applicant avers that on the 20/08/2002 that he was appointed as an administrator jointly with his brother Peter Githenya and the respondent.
5. That on the 6/12/2004 the Grant was confirmed and the property Thegenge/Karia/1971 was divided amongst the three administrators into three equal portions.
6. The respondent was given a life interest to be held in trust for her daughter Mercy Wangari Karuiki ; the applicant states that the respondent has caused her life interest to be sub-divided into three portions and is apprehensive that the respondent may sell the parcels.
7. The applicant avers that his sister was is out of the country; and that she stood lose her inheritance;

- hence his intervention and the filing of the instant application to safeguard her interest.
8. The applicant prays that three titles namely Thegenge/Karia/4206, 4207 and 4208 be cancelled and consolidated into one title as per the Certificate of Confirmation.

ANALYSIS

9. This court has noted that the applicants' prayer in the application is for a restriction to be placed over the three titles pending the hearing and determination of the application inter partes.
10. This court opines that a party is bound by his pleadings; and is of the view that the prayer as framed is spent upon the hearing and determination of the instant application; that there is nothing pending for the court to determine once a determination is made on the application.
11. The applicant has also requested this court to cancel the three titles that are products of the subdivision of the respondents life interest; Order 37(g) of the Civil Procedure Code requires the applicant/administrator to approach the court by way of Originating Summons; the section reads as follows;

“37(g) the determination of any question arising directly out of the administration of the estate or trust”

12. The applicant can also approach the court by filing a Plaint as provided by Order 3 of the Civil Procedure Code; which provides;

“(1) Every suit shall be instituted by presenting a plaint to the court, or in such other manner as may be prescribed.”

13. Such other manner prescribed may be by way of a Petition in the event of infringement of the beneficiaries rights; it is this courts considered view that a mere application supported by an affidavit is not a process recognized in law as a method of approaching a court of law particularly where there are serious issues touching on termination of interests in land and where there is need for evidence to be adduced and concerned parties accorded a fair hearing.
14. From the annexures marked as “Di” “Dii” and “Diii” it is also apparent that titles have been issued; the Constitution 2010 and the Environment and Land Court Act gives the Environment and Land Court the mandate and jurisdiction to hear and determine issues relating to land and the cancellation of titles; therefore this court is not the proper forum as it has no jurisdiction to entertain the matter.

FINDINGS AND DETERMINATION

15. For the reasons stated above this court finds that the application is partially spent; the other prayer sought for cancellation is found to be incompetent.
16. The application is hereby dismissed with no orders as to costs as this is a family matter.

Orders accordingly

Dated, Signed and Delivered this 28th day of April, 2016.

A.MSHILA

JUDGE