



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 490 OF 1995**

**IN THE MATTER OF THE ESTATE OF ARNEST NJOROGE KIARIE *alias* ERNEST  
MUKUHA KIARIE (DECEASED)**

**RULING**

1. Am called upon to determine an application dated 15<sup>th</sup> December 2014. It seeks several mandatory, temporary and permanent injunctions against the former administrator of the estate, Samuel Njoro Kabi, who has been named as the first respondent, with respect to Dagoretti/Kangemi/783. It also seeks declaratory orders with respect to Dagoretti/Riruta/4168 and 4169. Orders are also sought against the Land Registrar for removal of restrictions and caveats on the said parcels of land.
2. The grounds upon which the application is premised are set out on the face of the application, and the facts upon which it is founded are deposed in the affidavit in support. The first respondent had been removed by the court as administrator, and the complaint is that upon his removal, he has failed to surrender the title deed in respect of Dagoretti/Kangemi/783, has purported to sell a portion thereof and is in the process of developing the said property, yet the same has been allotted to other survivors in the confirmation of the grant dated 7<sup>th</sup> June 2010. The complaint against the land registrar is that he has refused to remove the restriction on the subject properties, which has made it extremely difficult for the administrator/applicants to complete administration of the estate.
3. The applicants have attached several documents to their affidavit in support of the application, sworn on 15<sup>th</sup> December 2014. There is copy of the grant of letters of administration intestate made to them on 28<sup>th</sup> May 2008. There is also copy of the grant that had been made to the first respondent on 23<sup>rd</sup> May 1995. There is also copy of a certificate of confirmation of grant dated 3<sup>rd</sup> March 1998. They have too attached copy of the summons for revocation of grant dated 24<sup>th</sup> January 2007. There is another copy of certificate of confirmation of grant dated 7<sup>th</sup> June 2010, being of the grant made to the applicants on 7<sup>th</sup> June 2007. There is copy of minutes of a meeting held on 15<sup>th</sup> October 2010, where the family, including the first respondent, allegedly agreed on the subdivision of Dagoretti/Kangemi/783. Surveyors were to be engaged to demarcate it, after which three plots were to be given to David Kanyoro, with rest of the family having to make a decision later on the rest of the subplots. There are copies of death certificates in respect of Simon Manjeri Njoro and Zipporah Waithira Mukuha, who died on 18<sup>th</sup> November 1996 and 23<sup>rd</sup> April 2006, respectively. Copies of searches in respect of Dagoretti/Riruta/4168 and 4169 reveal that restriction were registered against the titles on 27<sup>th</sup> September 2012
4. The application was served on the respondents. It would appear from the record that the first respondent did reply to the application, by filing a replying affidavit, jointly with another, but that affidavit is not in the record before me. What I have is copy of the affidavit sworn by the applicants on 22<sup>nd</sup> May 2015 in response to the affidavit by the first respondent, purportedly filed on 8<sup>th</sup> May 2015.
5. I directed on 25<sup>th</sup> May 2015 that the application dated 15<sup>th</sup> December 2014 be disposed of by way of written submissions. Both sides have filed their respective written submissions. The applicants submissions are detailed, complete with authorities. The first respondent has submitted on both the facts and the applicable law. The first respondent's principal position is that he does not recognize the appointment of the applicants as administrators, and consequently questions the authenticity of the confirmation of the grant thereafter.

6. The deceased herein died on 27<sup>th</sup> March 1992. Representation to his estate was obtained on 23<sup>rd</sup> May 1995, by the first respondent in his capacity as son of the deceased. The said grant was confirmed on 3<sup>rd</sup> March 1998. On 15<sup>th</sup> February 2007, the applicants lodged an application at the registry, dated 24<sup>th</sup> January 2007, seeking revocation of the said grant and challenging the confirmation of the said grant. The application dated 24<sup>th</sup> January 2007 was allowed by consent on 28<sup>th</sup> May 2008. It was expressly stated in the order that the grant of letters of administration intestate made on 23<sup>rd</sup> May 1995 was revoked and that a fresh grant was to be made to the applicants. The new administrators were directed to apply for a confirmation of the grant appointing them. The grant made to the applicants was confirmed on 9<sup>th</sup> June 2010.

7. I have carefully perused through the record of the events after 28<sup>th</sup> May 2008 and 9<sup>th</sup> June 2010, and I have not encountered any orders reversing the orders made on those two dates. The said orders are still in force and binding.

8. By virtue of section 79 of the Law of Succession Act, Cap 160, Laws of Kenya, the property of the estate vests in the personal representatives. By dint of their appointment on 28<sup>th</sup> May 2008 the estate of the deceased vested in the applicants. This means that they should be the persons having custody and possession of the all the documents of title relating to the assets of the estate. Once the first respondent's appointment was revoked by the order made on 28<sup>th</sup> May 2008, he ought to have surrendered all the documents of title to estate property, that were in his possession, to the new administrators.

9. The orders made on 28<sup>th</sup> May 2008 did not expressly vacate the orders made on 3<sup>rd</sup> March 1998 confirming the grant of 23<sup>rd</sup> May 1995. However, after the said grant was revoked the court directed the new administrators to apply for confirmation of the grant. That impliedly meant that the confirmation orders of 28<sup>th</sup> May 2008 had been vacated. Indeed the court proceeded to confirm the latter grant on 9<sup>th</sup> June 2010. In that confirmation of the grant, Dagoretti/Riruta/4168 and 4169 were devolved to Francis Njoroge and David Kanyoro Njoroge, respectively. The new administrators are obliged to convey these two assets to the named individuals.

10. I am satisfied that the applicants are entitled to the orders sought in their application. There shall be orders in terms of prayers 3, 4, 7, 9, 10, 11 and 12 of the application. The applicants shall have costs of the application.

**DATED, SIGNED and DELIVERED at NAIROBI this 22<sup>ND</sup> DAY OF JULY, 2016.**

**W. MUSYOKA**

**JUDGE**