REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1228 OF 2006

IN THE MATTER OF THE ESTATE OF SAMUEL KINYANJUI WAIGANJO (DECEASED)

RULING

1. I am tasked with determining three applications, both of which seek the review or setting aside of orders made herein on 21st February 2013. The said applications are dated 18th November 2013, 11th June 2014 and 31st July 2014.

2. The application dated 18th November 2013 seeks the setting aside of the orders issued by the court on 22nd March 2013 and that the administrator be heard on the application by the interested party dated 30th January 2013. The grounds upon which it is premised are set out on the face of the application as well as in the affidavit in support sworn by the applicant, James Muigai Kinyanjui.

3. The applicant's position is that the parties had way back in 2006/2007 agreed on representation to the estate of the deceased, whereupon he and his late brother, Brown Njenga Kinyanjui, were appointed administrators of the estate. After the latter died the applicant herein continued to diligently administer the estate. He complains that sometime in 2013 he came to discover that the grant had been cancelled without his knowledge. He blames his previous advocate for failing to inform him of the application or even to attend court at the hearing of the application. He argues that the order of 22nd March 2013 was an afterthought for the court had confirmed the grant previously and the estate had been distributed.

4. The reply to the said application is founded on the affidavit of Monica Murugi Mungai sworn on 15th January 2015. She asserts that the applicant had been served with the application dated 13th December 2012, and points to an affidavit of service attached to her affidavit. She claims that the current application has been made purposely because the applicant and another had sold some estate property and the buyer was asking for a refund. The said sale is said to have been done despite there being an order for maintenance of *status quo* made on 11th February 2009.

5. The application dated 11th June 2014 was filed herein on 13th June 2014, by Peris Njambi Kinyanjui and Esther Waithera Ndenderu. It seeks two principal orders: that that the orders made on 21st February 2013 be stayed pending the hearing and disposal of all pending applications, and that the said orders be reviewed or set aside pending the hearing of the instant application.

6. The grounds upon which the application is premised are set out on the face of the application, and the facts deposed in the two affidavits in support sworn separately by the applicants on 12th February 2014. It is averred that the applicants had not been served with the application which culminated in the orders of 21st February 2013, and that they were therefore not accorded an opportunity to be heard. They state that as a result of the said orders they were being displaced and yet there was consent from the beneficiaries before the grant was confirmed, adding that some of the assets have been sold to third parties.

7. Peris Njambi Kinyanjui specifically avers that she has been evicted from her home by her brothers and sisters on account of the said order. She asserts that she had not been served with the application or with eviction orders prior to her eviction from estate property. On her part, Esther Waithera Ndenderu avers that she sold the property allotted to her to raise school fees for her children, and the buyer is the person settled on the land. She avers that upon obtaining the court orders the respondents went about demolishing structures and vandalizing property. Both complain that despite the order that the survivors apply for appointment of administrators, no such application has been filed to date.

8. The said application has been responded to by the respondents. There is an affidavit on record sworn on 24th June 2014 by Monica Murugi Mungai, on her own behalf and that of Arthur Gichuru, Reginald Ngugi Kinyanjui, Grace Rosebell Wanjiru and Gladys Wambui Mburu. She states that the survivors have since filed an application, dated 17th September 2014, seeking appointment of fresh administrators. She avers that the application which culminated in the orders of 21st February 2013 had been served on all the parties, and she has exhibited affidavits of service to support these averments. She states that the applicants' advocates were actually in court on the day the application was heard, and at the delivery of the ruling the applicants were personally in court. She avers that Peris Njambi Kinyanjui lies to court when she alleges that she has been evicted for she still occupies that house that had been constructed by their father. She claims that the application is specifically brought for other purposes as one of the persons who had bought property from her and the former administrator is pushing for a refund. She asserts that if any property was destroyed as alleged then Peris Njambi Kinyanjui ought to have reported the matter to the police.

9. On Esther Waithera Ndenderu, she avers that there was a *status quo* order on the property she claims, and when she obtained representation to her late husband's estate she became a trustee of the property for the children, and she therefore she had no authority to dispose of the estate property without the court's consent. She further claims that the money raised from the sale referred to by Esther Waithera Ndenderu was not used to pay school fees, but rather it was shared out between individuals that she has named in her affidavit.

10. The other documents annexed to the affidavit of Monica Murugi Mungai relate to the process in the matter of the estate of Brown Njenga Kinyanjui in Nairobi HCSC No. 1111 of 2010. Brown Njenga Kinyanjui is the late husband of Esther Waithera Ndenderu, the second applicant. There is attached a copy of the Summons for Confirmation of Grant dated 11th July 2011 filed in that cause, together with the affidavit in support sworn on 11th July 2011 by Esther Waithera Ndenderu, where it was proposed that the property she claims, Naivasha/Mwichiringiri/Block 4/709 be registered in her name to hold in trust for all the children of her late husband in equal shares. There is however no evidence that the said summons was allowed and the grant confirmed in the terms proposed by Esther Waithera Ndenderu.

11. The application dated 25th July 2014 seeks review, setting aside and revocation of the orders made on 24th February 2009 and delivered on 21st February 2013. It calls for a rehearing of the application to address the real issues, reinstatement of the confirmation of grant dated 9th July 2007 and a declaration that the administrator had lawfully administered the estate of the deceased, distributed the same and lawfully sold property to the applicant, Samson Wachira Maina.

12. The grounds upon which the application is premised are set out on the face of the application as well as in the affidavit in support of the application. The applicant avers to have bought the property known as Naivasha/Mwichiringiri/Block 4/709 from its registered proprietor, Esther Waithera Ndenderu, after he bought the same he proceeded to subdivide it into several plots and sold most of the subplots. He avers that Esther Waithera Ndenderu had acquired the property through inheritance from the estate of the deceased. He feels he should be heard on the matter as he has acquired the interest of a *bona fide* purchaser for value. He had attached copies of eth title deeds in respect of Naivasha/Mwichiringiri/Block 4/709 depicting Esther Waithera Ndenderu as owner thereof before the sale to him, and him as owner thereof after the sale. There is also copy of a mutation form to demonstrate that he did subdivide the said property into subplots.

13. The reply to the application of 25th July 2014 is in the affidavit sworn by Monica Murugi Mungai on 16th September 2014. She states that the court had on 20th November 2007 made an interim order for the preservation of the estate pending *inter partes* hearing of her application for revocation of grant. The administrators are said to have dishonoured the said order, prompting the deponent to move the court afresh for preservation of the estate, which culminated in the orders of 13th February 2009 for maintenance of *status quo*. On 24th February 2009 another order for the preservation of the estate was made. It is her case that as at the time the orders were being made the property was still in the name of the deceased. She asserts that the *status quo* orders have never been set aside. She contends that the transfer of Naivasha/Mwichiringiri/Block 4/709 to Esther Waithera Ndenderu was made during the currency of the *status quo* order and was therefore null and void. In her view, it follows that the subsequent transfer of the same property to the applicant was also a nullity. She asserts further that the applicant is a third party to the estate, and he has no locus to bring the instant application, stating that the applicant's claim should be asserted against Esther Waithera Ndenderu who sold the subject property to him. She avers that following the orders of 22nd March 2014 and 28th April 2014, all the immovable assets of the deceased reverted back to the estate and the relevant registers rectified.

14. She has attached documents to her affidavit to support her case about the property reverting to the name of the deceased. There is also copy of the order extracted from orders made on 20th November 2007 and 13th February 2009 for preservation of the estate.

15. There is an affidavit on record sworn on 17th September 2014 by James Muigai Kinyanjui. He supports the applications dated 31st July 2014 and 29th August 2014, and urges that the confirmation of the grant be reinstated.

16. There is on record another replying affidavit, sworn on 26th January 2015 Edward Kihara Ngugi. He avers that on 13th February 2013 he purchased a piece of land from James Muigai Kinyanjui, who was then the administrator of the estate of the deceased. He states that he did so upon consulting all the beneficiaries of the estate. He subsequently bought other portions of the land on 29th January 2013 and 28th March 2013 from Richard Kungu Kinyanjui and Phyllis Njambi Kinyanjui, respectively. He asserts that all the beneficiaries, including the objectors herein, had consented to the said sales and executed consents before the area Chief. He accuses Monica Murugi Mungai of hiring goons to demolish buildings that he had put up in the said portions of land that he had bought from the estate. He states that he has not recovered anything from the former administrator.

17. He has attached several documents to his affidavit to support his case. There is copy of a sale agreement entered into on 13th February 2007, between him and the former administrator, James Muigai Kinyanjui, for sale of a portion of Dagoretti/Kinoo/2465. The sale agreement was signed by among others, Charles Nganga Kinyanjui and Richard Kungu Kinyanjui. Then there is the second sale agreement dated 29th January 2013, disposing of a portion of Dagoretti/Kinoo/2465 by Richard Kungu Kinyanjui to Edward Kihara Ngugi. The last sale agreement is dated 28th March 2013 and was between Edward Kihara Ngugi and Phyllis Njambi Kinyanjui, again disposing of a portion of Dagoretti/Kinoo/2465. The agreement was witnessed by among others, Richard Kungu Kinyanjui. The last document is handwritten, bearing the date of 19th March 2007, and headed 'Agreement between all the sons and daughter of the deceased.' It authorizes subdivision of the land, and thereafter occupation, development and disposal by sale of the said subdivisions. The document mentions Edward Kihara Ngugi as one of the persons who have acquired an interest on the subject land. The document is thereafter signed by nine (9) individuals, and witnessed by three (3) others. Those signing it included James Muigai Kinyanjui, Charles Nganga Kinyanjui, Richard Kungu Kinyanjui, Gladys Wambui Mburu, Monica Murugi Mungai, Arthur Gichuru Kinyanjui, Reginald Ngugi Kinyanjui, Peris Njambi Kinyanjui and Edward Kihara Ngugi.

18. The last affidavit in respect of the review applications was sworn on 15th January 2015 by Monica Murugi Mungai. The principal point made in the same is that James Muigai Kinyanjui and Peris Njambi Kinyanjui sold part of Dagoretti/Kinoo/2465 at a time when there were orders in force for maintenance of

status quo. She asserts that the review application was brought by the former administrator as the purchaser of the property was pursuing refund of the purchase money.

19. When the matter came up for hearing on 9th December 2014, I directed that all the pending applications seeking review and setting aside of the order made on 21st February 2013 be disposed of simultaneously by way of written submissions. The parties complied by filing their respective written submissions on the applications the subject of this ruling. The applicant in the application dated 18th November 2013 filed his written submissions, dated 21st January 2015, on 23rd January 2015. Edward Kihara Ngugi, the caveator/purchaser, filed his submissions, dated 26th January 2015, on a date which is not clear from the copy in the court file. The objectors written submissions are dated 21st January 2015 and were filed herein on 23rd January 2015.

20. The applicant in the application dated 18th December 2013 does not submit on the law. His so called submissions dwell on matters of fact. It is an effort by the former to explain how he sold the subject property, how the purchaser failed to complete sale and how the objectors went behind his back and obtained court orders. Submissions, whether written or oral, ought to dwell only on points of law. It should not be an opportunity to the parties to state once again the factual background to their case. The caveator's written submissions are equally founded on facts, not the law. The objectors also dwelt at length on the facts, but they have stated that the law on the principles for setting aside of court orders, as stated by the Court of Appeal in *Njagi Kanyunguti alias Karingi Kanyunguti and others vs. David Njeru Njogu* (1997) eKLR.

21. The deceased herein died on 13th May 1999. Representation to his estate was sought in a petition lodged in this cause on 6th June 2006 by J Brown Njenga Kinyanjui and James Muigai Kinyanjui in their capacities as sons of the deceased. They named ten (10) individuals as the persons who had survived the deceased, being six (6) sons and four (4) daughters. He was said to have died possessed of nine (9) assets. A grant of letters of administration was accordingly made to the two petitioners on 28th August 2006, and was confirmed on 9th July 2007, disposing of the estate to the six sons and one daughter. Following the death of by J Brown Njenga Kinyanjui, James Muigai Kinyanjui was retained as the sole administrator of the estate.

22. Shortly after the confirmation of the grant an application for revocation of the grant was lodged at the registry, on 18th August 2007, by six (6) of the surviving children of the deceased – Grace Wanjiru, Monica Murugi, Gladys Wambui, Peris Njambi, Arthur Gichuru and Reginald Ngugi. They advanced two principal grounds: that three of the daughters of the deceased were not disclosed at the point the grant was applied for and obtained, and that they were not provided for at the distribution of the estate.

23. On 20th November 2007, the court made orders, by consent, to the effect that the estate of the deceased be preserved by the present administrators until further orders. A further order was made on 13th February 2009 to the effect that *status quo* be maintained. A further order was made by consent on 24th February 2009, to effect that an application dated 11th February 2009 was allowed in the terms that there was to be no disposal or alienation of Dagoretti/Kinoo/595 and 2465 until further order of the court. Related orders were made on an interim basis on 13th December 2012 on an application dated 13th December 2012. The orders sought in that application were to restrain the then administrator, James Mungai Kinyanjui, with respect to Dagoretti/Kinoo/595 and 2465, and several orders against the Land Registrar, Naivasha with respect to Naivasha/Mwichirigiri Block 4/4/709 relating to the prohibition of subdivision of the said land, commanding issuance of a green card and cancelling transfer from the name of the deceased. These orders were extended on 24th December 2012 until further orders of the court.

24. All the applications for determination seek the setting aside of the orders made herein on 21st February 2013. In one it is argued that the applicant had not been informed by his counsel about the application which culminated in the making of the orders in question, nor did his advocate attend court on the appointed date. In the other it is argued that the applicants had not been served with the application

the basis of the order sought to be set aside. Both applicants state that all the parties had agreed to the distribution in the cancelled confirmation.

25. The probate process does not expressly provide for the setting aside of court orders, and the provisions in the Civil Procedure Rules on setting aside of court orders and judgments have not been imported into probate practice through Rule 63 of the Probate and Administration Rules, which has adopted several other processes from the Civil Procedure Rules. That, however, should not be taken to mean that the court cannot, in appropriate cases, exercise discretion to set aside its orders. Rule 73 of the Probate and Administration Rules saves the inherent power of the court to make orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

26. When the applicants got the opportunity to file written submissions, they did not take advantage of the same to address the court on the principles that ought to guide the court in exercising discretion to set aside its own orders. The respondent, however, referred to and cited the decision of the Court of Appeal in *Njagi Kanyunguti alias Karingi Kanyunguti and others vs. David Njeru Njogu*, where the court, following an earlier decision by the former Court of Appeal for Eastern Africa in *Shah vs. Mbogo* (1967) EA 116, had stated that the court would only exercise discretion in favour of setting aside an order to avoid injustice or hardship resulting from accident, inadvertence or excusable mistake or errors, and would not act in a manner that would assist a person who has sought deliberately to obstruct or delay the course of justice.

27. The orders the subject of these proceedings were made on the basis of an application dated 13th December 2012. That application was first placed before Mugo J. on 13th December 2012 under certificate of urgency, it was certified urgent and directed that the same be served, interim relief was granted for fourteen (14) days and it was to be heard *inter partes* on 24th December 2012. Come 24th December 2012, the hearing was put off to 21st January 2013 and the interim orders were extended. Come 21st January 2013, counsel for the respondents herein attended court with the advocate for the applicant in the application dated 11th June 2014. It was said that counsel for the applicant in the application dated 18th November 2013 had been served, but was not in attendance at the hearing.

28. There is an affidavit of service herein filed on 18th January 2013, sworn on even date, returning service of a hearing notice dated 10th January 2013 with respect to the hearing scheduled for 21st January 2013, which had been served on the law firms appearing for the applicants herein on 10th January 2013. Both law firms embossed their respective stamps on the hearing notice returned to court as proof of their receipt of service. There was therefore effective service of the notice of the hearing. The applicants cannot therefore be heard to say that the proceedings were without notice to them. The advocate for one of the applicants chose to stay away from the proceedings, while the advocate for the other applicants attended court and indicated that he had no instructions and stated that he had nothing to say to the court in reply to the application.

29. The matter coming up on 21st January 2013 had been certified urgent, and the parties on the other end of the application had been served ten (10) clear days ahead of the hearing, yet none of them filed any papers in reply to the application. One of them, and their advocate, chose to stay away on 21st January 2013; the other, though in attendance, chose not to address the court on the application, not even to address issues of law arising from the said application. I am satisfied from the above that a proper case has not been laid for setting aside the orders in question.

30.The applicants invite me to review the orders made on 21st February 2013, on the grounds that are set out in the affidavits filed in support of the said applications.

31. Review of court orders is provided for in the Probate and Administration Rules, where Rule 63 thereof has imported the provisions of the Civil Procedure Rules thereon into probate practice. It is notorious that review is granted for discovery of evidence of importance to the matter that was not available at the time the order was made, or on account of an error apparent on the face of the record, or

on grounds of any other sufficient reason.

32. I have carefully perused through the affidavits sworn in support of the applications before me, and I am not persuaded that any of the parties sought to make any serious case for review of the orders sought. It is not averred in any of the applications or affidavits in support thereon that there had been discovery of a new and important matter of evidence that was not available on 21st February 2013, which would have led the court to decide differently; or that there was an error apparent on the face of the record; or that there existed sufficient ground for review of the said order.

33. In the application dated 11th June 2014, it is averred that the application had not been served on the applicants, they were therefore not heard on it, the beneficiaries had consented to the distribution reversed by the said orders and they had been evicted on account of the said orders. There is evidence that the advocate for the applicant had been served with notice of the hearing scheduled for 21st January 2013, he did attend court and chose not to make submissions on the application. Non-service cannot therefore be an issue, neither can it be said that there was no opportunity for the applicants to be heard. Whatever happened subsequent to the making of the orders cannot be in my view be a basis for review of the said orders.

34. In the application dated 25th July 2014, the applicant calls for a rehearing of the application so as to address what the applicant calls real issues and for a declaration that the former administrator had done well with the administration of the estate. I have noted that the application dated 25th July 2014 was brought at the instance of a third party, that is a person who is neither an administrator of the estate, nor a survivor of the deceased, nor beneficiary of the estate. It is by a person who stakes a claim to the estate by virtue of having allegedly purchased property from the estate. The said person was not party to the proceedings as at the time the application was heard and determined. He was therefore not entitled to be heard on the application. It is my view that such a person has no legal standing to seek review of orders that were made when he was not party to the suit, noting that he, being neither an administrator of the estate nor a survivor of the deceased, has not sought to be enjoined to the proceedings as an interested party. Quite clearly, he has no basis for seeking the orders that he seeks, and the competence of his application is doubtful.

35 One threads runs through all the three applications, that the distribution that was vacated by the court had been agreed upon and some of the assets the subject of the confirmation had been sold to third parties. The application dated 25th July 2014 is actually by one of such third parties, while the other third party has filed an affidavit in support of one of the other applications.

36. None of the applicants has been candid enough to say that there had been filed a summons for revocation of grant shortly after the confirmation of the grant by parties who were unhappy with the distribution of the estate. Subsequent to that, the court, on divers dates (20th November 2007, 13th February 2009 and 24th February 2009) made orders whose cumulative effect was to freeze the confirmation orders of 9th July 2007. The orders of 20th November 2007, 13th February 2009 and 24th February 2009 had not been lifted or discharged before the orders of 21st February 2013 were made. There might have been agreement on the distribution in question, but that agreement was held in abeyance by the orders of 20th November 2007, 13th February 2009 and 24th February 2009.

37. Furthermore, subsequent to the filing of the summons for revocation of the grant, parties began to engage in discussions aimed at the redistribution of the estate. That was what the parties intimated to court on 29th October 2008 and 23rd February 2009. Indeed, on 3rd December 2008 an order was made directing the parties to file and serve accounts and a proposal for distribution. On 2nd June 2009 it had been directed that the issue of distribution was to be heard on a date the parties were to obtain at the registry. Consequently, it could not be that the parties were at liberty to distribute the estate as per the certificate of confirmation of grant when there were orders for maintenance of *status quo*, discussions on redistribution of the estate and for hearing of the parties on the redistribution.

38. The applicants are categorical that the orders made on 21st February 2013 would cause hardship, hence the need to have them reviewed. They say that that is so given that the property the subject of the confirmation orders had been sold. This argument is defeatist for the reasons that should emerge from what I have stated in paragraph 37 here above. The court made clear orders after the grant was confirmed and subsequent upon the filing of the revocation agreement. I have referred to these orders in paragraph 23 above. The effect of those orders was to stay implementation of the confirmation orders. The applicants in their respective averments do not advert to these orders and appear to have had carried on as if those orders did not exist or were never made. They appear to justify their actions or conduct, yet the said actions were or the conduct was in clear contravention of court orders.

39. In the application dated 11th June 2014, the property at the centre of controversy is Naivasha/Mwichiringiri Block 4/709. The applicant in that application states that she sold it to pay school fees. The property passed to the hands of one of the applicants, Esther Waithera Ndenderu, following the death of her husband, Brown Njenga Kinyanjui, who had been an administrator of the estate of the deceased herein. He died on 25th January 2009, and representation to his estate was granted to his wife, Esther Waithera Ndenderu, in Nairobi HCSC No. 1111 of 2010. The said grant was confirmed on 26th July 2011, where Naivasha/Mwichiringiri Block 4/709 was devolved to Esther Waithera Ndenderu absolutely. A title deed in respect of Naivasha/Mwichiringiri Block 4/709, dated 15th August 2012, was issued in her name. She entered into a sale of the said property with Samson Wachira Maina on 24th August 2012. There is evidence that the said Samson Wachira Maina had the said property transferred to his name and a title deed thereon issued on 2nd October 2012. The latter proceeded thereafter to subdivide the property with intent to sell the subplots.

40. All the activities referred to above proceeded in contravention of the orders referred to in paragraph 23 here above. By the time Brown Njenga Kinyanjui was dying on 25th January 2009, Onyancha J. had already made the order of 20th November 2007, for preservation of the estate of the deceased by the administrators, who included Brown Njenga Kinyanjui, pending further orders. The said preservation order meant that the status of ownership of the assets that made up the estate of the deceased was to remain intact until further orders. The property in Naivasha/Mwichiringiri Block 4/709 ought not to have been subjected to succession as part of the estate of Brown Njenga Kinyanjui in Nairobi HCSC No. 1111 of 2010, in view of the order made on 20th November 2007. Subjecting the said property to the said succession was a violation of the said order, and the conduct did not assist in the preservation of the estate of the deceased.

41. The subsequent orders of 13th February 2009 and 24th February 2009 were made after the death of Brown Njenga Kinyanjui, but they still bound the surviving administrator and any other person dealing with the estate. This then means that the succession process that I have referred to in paragraphs 39 and 40 here above, particularly the confirmation of the grant which devolved Naivasha/Mwichiringiri Block 4/709 to Esther Waithera Ndenderu, the transfer of the said property to the name of the said Esther Waithera Ndenderu, the sale thereof to Samson Wachira Maina, the transfer to his name and the subdivision of the property were are done in disobedience of the clear orders of 20th November 2007, 13th February 2009 and 24th February 2009. It is instructive that the applicants are unapologetic of the fact that their conduct was in total disregard of the law as laid out in the said court orders.

42. The other disposals of land by sale done during the currency of the said orders were in respect of Dagoretti/Kinoo/2465. One sale was on 29th January 2013 by Richard Kungu Kinyanjui to Edward Kihara Ngugi. The other sale was on 28th March 2013 between Phyllis Njambi Kinyanjui and Edward Kihara Ngugi. All these transactions took place at a time when the orders of 20th November 2007, 13th February 2009, 24th February 2009, 13th December 2012 and 24th December 2012 were still in force. Indeed the order of 24th February 2009 was specific to Dagoretti/Kinoo/2465, the same was not to be sold or alienated until further order of the court. Again, the applicants acted in blatant disregard of these very clear court orders.

43. There was a sale of a portion of Dagoretti/Kinoo/2465 on 13th February 2007 by James Muigai Kinyanjui, also to Edward Kihara Ngugi. This was before the confirmation of grant on 9th July 2007, and the making of the orders of 20th November 2007, 13th February 2009 and 24th February 2009 for the preservation of the estate. However, the said sale still fell afoul of the law. Section 82(iii) of the Law of Succession Act, Cap 160, Laws of Kenya, is trite that no immovable property is to be sold before confirmation of the grant. For avoidance of doubt the said provision states as follows:-

> *'…no immovable property shall be sold before confirmation of the grant.'*

44. From the foregoing, it is my view that the applicants do not have any arguable case for the setting aside of the orders made on 21st February 2013, neither have they made a case for their review. What the applicants have succeeded in doing in their applications is to reinforce the justification for the said orders. The administrator then in office had clearly acted in total violation of the law by ignoring orders of the court and proceeding with impunity with transactions that had been stayed. His continued stay in office as administrator was no longer tenable in the circumstances. It would appear that the conduct of the former administrator in all these cases exposes him to prosecution for contempt of the court orders mentioned.

45. The applicants knew that there was a pending application for revocation of the grant herein. They even entered into negotiations towards settling the matter out of court. They knew that there were orders for maintenance of *status quo*. They ought to have known that the determination of that application could require the redistribution of the estate, hence the need to preserve the estate pending determination of the application. Yet with that knowledge they embarked on conduct that was tailored to defeat the said application. Their conduct was not in good faith, and was designed to reduce the said application into an academic exercise.

46. An administrator occupies an office of trust. Indeed, the definition of a trustee in section 2 of the Trustee Act, Cap I67, Laws of Kenya, includes a personal representative. A trust is a device in equity. Equity revolves around good faith. An administrator, as a trustee, is expected to engender trust and confidence in all those who are beneficially entitled to a share in the property he holds in trust. To attract the trust and confidence of the beneficiaries, he should always act in and display good faith.

47. An administrator who is aware of the pendency of an application for revocation of grant, where necessity demands the preservation of the *status quo* so far as the assets are concerned, but chooses to deliberately defeat the application by conduct designed to destroy the *status quo*; such an administrator does not meet the standards expected of such office.

48. It was averred that the beneficiaries of the orders of 21st February 2013, proceeded in enforcing the order in a manner that was destructive of property and which led to the eviction of the applicants from the lands in question. It was said that this was done in purported execution of the orders of 21st February 2013.

49. The orders made on 21st February 2013 merely revoked the grant made on 24th February 2009, cancelled the certificate of confirmation of grant and directed the children of the deceased to agree on the persons to be appointed administrator. There was nothing in the order requiring eviction of any one from the suit premises, nor for demolition of structures. Anybody who purported to demolish structures and evict individuals from premises did not do so on the strength of the said orders. Such persons simply took the law into their hands using the order as an excuse. Those who suffered from their excesses are at liberty to take such steps as are appropriate to obtain relief for themselves from the tortfeasers.

50. n view of everything that I have stated above, I have come to the conclusion that the applications herein – that is to say those dated 18th November 2013, 11th June 2014 and 31st July 2014 – are wholly without merit and I do hereby dismiss the same with costs to the respondents.

DATED, SIGNED and DELIVERED at NAIROBI this 22ND DAY OF JULY, 2016.

W. MUSYOKA

JUDGE