



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**SUCCESSION CAUSE NO. 247 OF 2012**  
**IN THE MATTER OF ESTATE OF REUBEN MWANGI FUND- DECEASED**  
**PAUL FUNDI.....APPLICANT**  
**VERSUS**  
**JOHN KARIUKI AND OTHERS.....RESPONDENTS**  
**RULING**

**1. INTRODUCTION**

This Ruling is in respect of the application dated 14<sup>th</sup> April, 2015 lodged in court on the 15<sup>th</sup> April, 2015 whereby PAUL FUNDI (hereinafter the applicant) sought orders;

1. Spent
2. Spent (on one part but contained a prayer to extend injunction until the distribution of the Estate of deceased is at the hands of administrators fairly nominated and approved by the court)
3. That all the properties that has (sic) been disposed to third parties be reverted and be restored to its (sic) initial status quo.
4. Those costs of the application be provided for.

The application is supported by an affidavit sworn by the applicant and on grounds:-

- a. THAT Applicant/Citor has been denied the beneficial right by the citee.
- b. THAT the Citee/Respondent are in hurry to dispose of the properties of the deceased to the third parties without following the right legal ways of doing so.
- c. THAT the Respondent/Citee are wasting the Estate of the deceased knowing very well that a citation is pending in the court awaiting the nomination of the administrator to distribute the Estate of the deceased fairly.

**2. THE APPLICANTS CASE.**

It is the applicants case that the respondents/citees are in a hurry to dispose off the properties of the deceased without following the right legal ways of doing so.

No administrator has been appointed and a citation is pending in court.

The applicant avers that the property known as NJORO/NGATA BLOCK 4/109 (RUMWE) has been divided into several plots numbering 485-495 and many of these portions have been disposed off to third parties. A mutation form is annexed. The form is dated 24/11/2007.

He adds that properties described as NAKURU/MUNICIPALITY BLOCK 21/313 and Block 21/320 which belonged to the deceased and two other partners have been transferred to MILIMANI PENTECOSTAL ASSEMBLY AND MESHACK OLUHAYO EDDY respectively. Copies of search certificates are said to be attached. I note however that what is attached are demand notices for rates which show the rate payers as at 20<sup>th</sup> April, 2014 as SIMON KARIUKI KAHUNJA, REUBEN MWANGI and JAMES GICHURU KAMANGE.

### **3. THE RESPONDENTS CASE.**

John Kariuki Mwangi (hereinafter John) with authority of other respondents has sworn a replying affidavit in which he depones inter alia that the deceased had prior to his death caused the sub division of parcel No.NJORO/NGATA BLOCK 4/109(RUMWE) into smaller portions as can be seen by the mutation form attached by the applicant and the deceased paid the surveyor. Receipts of such payment are exhibited.

John adds that the deceased gifted the beneficiaries the portions of land before his death.

The deceased (signed) the transfer documents during his lifetime. Individual titles were processed and some of the siblings sold their respective parcels. It is urged that the applicant never raised any concerns when the deceased was alive. Parcels NAKURU/MUNICIPALITY BLOCK 21/320 and BLOCK 21/313 were sold by the deceased before his death.

JOHN further depones that a petition for Letters of Administration has been filed in accordance with orders of this court.

### **4. FURTHER AFFIDAVITS BY THE APPLICANT.**

The applicant put in two further affidavits the gist of which is that the mutation forms attached are irregular and not done by the deceased since the same is dated 8<sup>th</sup> January, 2009 yet deceased died on 22<sup>nd</sup> December,2008. Again in his last days the deceased was suffering from senile dementia that affects the brain as seen from a medical report annexed by Dr.Njau W.

The applicant produces a land sale agreement made on 31<sup>st</sup> August, 2010 in respect of NAKURU/MUNICIPALITY BLOCK 21/313 to show that the said sale was illegal and fraudulent.

The transfer of the said parcel is challenged on grounds that it is shown to have been executed by the deceased, yet he was long dead. The power of Attorney used is also challenged as a fraud.

### **5. ISSUES FOR DETERMINATION.**

Having considered the rival affidavit evidence and the submissions of Counsel, the issues for determination crystalize into;

- i. **Whether the applicant has the necessary locus standi to bring the application as is.**
- ii. **Whether the Respondents should be restricted from interfering and inter meddling with**

**the property of the deceased by disposing off, transferring or taking proceeds of the dividends and any other properties until the distribution of the estate of the deceased is at the hands of administrators fairly nominated by the court. (This issue arises from prayer 2 in the application which as earlier noted was poorly crafted and mixed up a short term prayer for orders before exparte hearing and orders available upon the hearing of the application**

**iii. Whether all properties which have been disposed off to third parties be reverted and restored to the initial status quo.**

## **5. ANALYSIS**

There are uncertainties as to what constituted the free property of the deceased available for distribution at the time of his death with the applicant maintaining that properties NJORO/NGATA BLOCK 4/109 (Rumwe) belonged to the deceased at the time of his death and on the other hand the respondents maintaining that parcel NJORO/NGATA BLOCK 4/109 had been subdivided during the lifetime of the deceased and given out as a gift to beneficiaries who took possession and proceeded to process title.

Conflicting positions are also taken in relation to properties NAKURU/MUNICIPALITY BLOCK 21/313 and 320 with the applicant maintaining that the deceased had proprietary interest in both by the time he died and on the other hand the respondents maintaining that the said properties had been sold by deceased to third parties. There are also disagreements on who should receive dividend.

Principally, the application before me is one seeking to stop inter-meddling with the property of the deceased.

This matter found itself before the court by way of a citation and directions were given on the 19/6/2014 that the parties nominate representatives from either side to petition for letters of administration. It now emerges that either side have petitioned for letters separately.

From the record I note there is no evidence of a grant of Letters of Administration having been issued to either side yet. And this gives rise to the question of locus standi. Did the applicant have the locus standi to bring suit (an application) to stop intermeddling with the estate of the deceased? The ready answer is that the applicant had no locus standi so to do.

Whereas this court has powers under Section S.47 of the Law of Succession Act to give all necessary orders including injunctions where appropriate to safeguard the deceased estate an applicant requires the necessary locus standi to initiate such a suit.

In our instant suit, the applicant ought to have been appointed under the fifth schedule paragraph 10 of the Law of Succession Act which provides,

*“Pending any suit touching the validity of the will of a deceased person or for obtaining or revoking any probate or Letters of Administration, the court may appoint an Administrator of the estate of the deceased person who shall have all rights and powers of a general administrator other than the right of distributing the estate and the administration shall be subject to the immediate control of the court and shall act under its discretion”*

To Paraphrase Nyamu J. ( as he then was) in **Francis Kamau Mbugua and another -VRS- James Kinyanjui Mbugua H.C.C. NO. 111 of 2004 (OS)**

**“The applicants having failed to bring themselves under the Law of Succession Act and in particular paragraph 10 of the fifth Schedule to the Act have no recognized capacity in Law to bring the suit and the application. The applicants like the respondents are just potential beneficiaries. Better still they should have filed an application for Letters of Administration instead of expending their energies while they have no locus”**

Those sentiments resonate very well with our instant suit/application. It is not lost on the court the deceased died on 22/12/2008. Eight years down the line no grant has been issued and the parties only moved to petition for Letters recently and again bringing more controversy into the matter by filing two separate parallel petitions.

All the parties /beneficiaries must take a measure of blame in this uncalled for delay.

## **6. DETERMINATION**

All the issues in controversy including whether gifts were made intervals or some properties were sold are capable of resolution within the Succession Causes filed. The applicants application is well intended in that it seeks to preserve the subject matter but the same is defeated for lack of the necessary locus standi. Having so found. I need not dwell on issues. No. (ii) & (iii)

## **ORDERS/DIRECTIONS**

- The application dated 14<sup>th</sup> April, 2015 is dismissed.
- Each party to bear its own costs.

The parties to appear before court for a mention on directions on the way forward in this matter at the earliest opportunity.

**Dated, Signed and Delivered in open court at Nakuru this 29<sup>th</sup> day of September 2016.**

**A. K. NDUNG'U.**

**JUDGE.**