



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

SUCCESSION CAUSE NO. 74 OF 2014

(Formerly Naivasha CM's Succession Cause No. 55 of 2014)

**IN THE MATTER OF THE ESTATE OF PHILIP GITONGA MWANGI ALIAS PHILIP
MURIUKI MWANGI (DECEASED)**

JOSEPHIN WANJIRU MWANGI.....1ST PETITIONER/APPLICANT

PETER J. KIRAGU MWANGI.....2ND PETITIONER/APPLICANT

-VERSUS-

LUCIA NJERI KABERU.....RESPONDENT

RULING

1. On 22nd April 2016 this court dismissed an application brought by **Lucia Njeri Kaberu** to revoke that grant filed herein. It would appear that the said Applicant had also filed a caution in the Naivasha Land Registry on 30th September 1996 in respect of the land parcels no. **NAIVASHA/MWICHIRINGIRIBLOCK 4/2803 and 2804**. These parcels comprise part of the estate in respect of which a grant had been issued in favour of the Petitioners herein.

2. By their application filed on 16th June 2016 the Petitioners seek the raising of the said caution on grounds that:

“a) THAT Land parcels NAIVASHA/MWICHIRINGIRI BLOCK 4/2803 and NAIVASHA/MWICHIRINGIRI BLOCK 4/2804 are part of the Deceased’s Estate administered by the Petitioners/Applicants.

b) THAT the Land parcels NAIVASHA/MWICHIRINGIRI BLOCK 4/2803 and NAIVASHA/MWICHIRINGIRI BLOCK 4/2804 were registered in the names of Deceased.

c) THAT the Respondent registered Caution against the registers of the lands on 30/9/1996.

d) THAT the Respondent’s objection to Land Parcels NAIVASHA/ MWICHIRINGIRI BLOCK 4/2803 and NAIVASHA/MWICHIRINGIRI BLOCK 4/2804 being adjudged as the Deceased property was dismissed by court.

e) THAT it is in the interest of justice that the Cautions be removed to grant the

Petitioners/Applicants to effect the transfer of the land to the beneficiaries.”

3. These grounds are further developed in the two affidavits supporting the application, sworn by **Peter Kiragu Mwangi** on behalf the other Petitioners.

4. In her reply, the Respondent annexed a court order issued in **Nakuru ELC No. 192 of 2016** by the Deputy Registrar, **A. C. Towett** to the effect inter alia that:

“1. THAT this application is certified as urgent.

2. THAT there be a temporary order of an injunction restraining the Defendants/Respondents, their agents, associates, employees, servants and or any other from entering, remaining or carrying on any activities and/or interfering in any manner with the Plaintiff parcels of land known as NAIVASHA/MWICHIRINGIRI BLOCK 4/2803 and NAIVASHA/MWICHIRINGIRI BLOCK 4/2804 until the hearing and determination of this application herein interpartes.

3. THAT Applicant serves the Respondents by close of business tomorrow.

4. THAT this matter be mentioned interpartes on 30/06/2016 for taking a hearing date for the application.”

In the Respondent’s view, the present motion has been brought to defeat the said order.

5. The parties’ written submissions unsurprisingly dwell at some length upon the propriety of the injunctive order of the Deputy Registrar in the Environment and Land Court cause. This court, in my view, is not the forum to agitate the correctness or otherwise of the order made by the Deputy Registrar in the Environment and Land Court. I agree with Mr. Gichuki for the Applicants however, that the patent effect of order is *inter alia* to stop any attempts by the Petitioners to proceed with the distribution of the estate.

6. In due course, the proper court will hear the pending injunction application in the Environment and Land Court cause, and as persuaded, confirm or set aside the orders of the Deputy Registrar.

7. As Mr. Kimani for the Respondent has stated in his submissions **“The order (in the Environment and Land Court) takes precedence over and above the cautions that were lodge way back on 30/9/1996.....”** As at 22/4/2016 when this court dismissed the Respondent’s application for revocation, only the cautions on the title registers existed. These, I agree, now serve no purpose and have been overtaken by the subsisting Environment and Land Court order by the Deputy Registrar.

8. For my part, I am persuaded that the cautions are redundant and ought to be lifted in the first instance. Thereafter, it is upon the Petitioners to challenge the orders made by Environment and Land Court Deputy Registrar on 8th June 2016. I reject the Respondent’s argument that the existence of the order alone is reason enough to persuade this court to dismiss the present application.

9. The succession cause exists separately from the Environment and Land Court matter. Besides, as counsel for the Respondent has articulated the Respondents interests are well protected by the injunctive orders against the Petitioners. For the foregoing reasons, I do allow prayer (1) and (2) of the Motion filed on 16th June, 2016 with no orders as to costs.

Delivered and signed on this 25th day of November, 2016.

In the presence of:-

For the Petitioners : N/A

For the Protestor : N/A

Court Clerk : Barasa

C. MEOLI

JUDGE