

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 2823 OF 2013

**IN THE MATTER OF THE ESTATE OF SAIMON MUNGAI NGUGI alias SIMON MUNGAI
NGUGI (DECEASED)**

RULING

1. The applicants in the Motion dated 15th July 2015 seek removal of a caution lodged against the title in Kiambu/Kihara/1286 on 21st August 2008 and for an order directing Jennifer Mumbi Ngugi to surrender the original title in respect of the said property. The orders are sought ostensibly to facilitate execution of orders made herein on 30th January 2015.
2. The Motion came up for hearing on 27th October 2015. I was informed that it had been served and that there was an affidavit of service. The applicants were seeking to enforce the orders made earlier. The other parties were not in court, nor were they represented by counsel.
3. Two issues arise with respect to the instant application. The first relates to the standing of the applicants to prosecute the application, and the second turns on service of the application.
4. The order that the applicants seek to enforce, made on 30th January 2015, appointed Penina Njambi Ngugi, the administrator of the estate, and directed that the said Penina Njambi Ngugi be registered as proprietor of Kiambaa/Kihara/1286. It is not clear therefore the circumstances under which the two applicants filed the instant application, for they are neither the administrators of the estate of the deceased nor the beneficiaries of Kiambaa/Kihara/1286. They cannot possibly have capacity to bring the application. The property does not vest in them.
5. Regarding service of the application, I do note that there is an affidavit of service on record with respect to it. It was sworn on 20th August 2015, by a process server called Solomon Mbugua, and filed herein on 21st October 2015. Attached to it is a hearing notice dated 12th August 2015, addressed to Messrs. Nyaga & Co, Advocates, notifying them of the hearing scheduled for 27th October 2015. A stamp was embossed on the face of the hearing notice indicating that it was received at the offices of the said law firm on 18th August 2015 by a certain Juliet at 11.30am.
6. I have carefully flipped through the papers, and I have not come across proof of service of the Motion itself.
7. One of the persons named as respondent in the Motion is Jennifer Mumbi Ngugi. There is a notice of change of advocates lodged in the cause on 21st May 2014 by Messrs. Onesmus Githinji & Company, Advocates, indicating that the said law firm had taken over conduct of the matter in respect of Jennifer Mumbi Ngugi from Messrs. Ng'ang'a Nyaga & Co. Advocates. The Motion dated 15th July 2015 was filed after the filing of the said notice. There is no proof that the said Motion and the notice in respect of the hearing scheduled for 27th October 2015 were ever served on the said Messrs. Onesmus Githinji & Co, Advocates.
8. In view of what I have stated, I do not believe it would do justice to determine the said application before the same is properly served on all the parties so that the issues that I have mentioned above are addressed.
9. Consequently, I hereby direct the applicants to serve the Motion dated 15th July 2015 on counsel or the

respondents, that is to say Messrs. Ng'ang'a Nyaga & Co. Advocates and Messrs. Onesmus Githinji & Co, Advocates. The Motion shall thereafter be heard on a date to be given at the registry.

10. The assets which make up the estate of the deceased are situated at Kiambaa of Kiambu County. I do therefore direct that the cause herein be transferred to the High Court of Kenya at Kiambu for disposal.

DATED, SIGNED and DELIVERED at NAIROBI this 9TH DAY OF DECEMBER, 2016.

W. MUSYOKA

JUDGE