



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
CIVIL APPEAL CASE NO. 40 OF 2013

(IN THE MATTER OF THE ESTATE OF NYAGA ITUNGA - DECEASED)

MIKE MUCHUNKU.....APPELLANT/APPLICANT

VERSUS

KATHUNI NYAGA KIRINDI..... RESPONDENT

(An Appeal arising from the judgment and Orders of the Senior Resident Magistrate Runyenjes in Succession Cause No. 39 of 1997 made and delivered on 24th January, 2013)

RULING

The applicant/appellant in his application dated 20/11/2013 seeks for orders to restrain the respondent from transferring, alienating and or disposing parcels of land LR. MAGUMONI/RUBATE/1289, 1290, 129, 1293 and 1294 which are products of sub-division of the deceased's land MAGUMONI/RUBATE/342. The grounds relied on by the applicant are that the respondent who is the administrator of the estate has been showing interested buyers the parcels of land with a view of selling them the land. The respondent is a brother to the appellant and if not restrained he may sell the land and disinherit the beneficiaries. The applicant is desirous that the status quo be maintained.

The respondent in his replying affidavit opposes the application arguing that he has already obtained the title deed of the parcel allocated to him upon confirmation of grant. The applicant has been reluctant to obtain his title deed. This application has been overtaken by events and has been filed late considering that the grant was confirmed by Runyenjes court about six (6) months before filing this application.

On perusal of the prayers in this application, the delay for restraining the respondents has not been explained. This appeal was filed by the applicant challenging the orders of Runyenjes court on the mode of distribution it adopted. However, if the applicant wished to restrain the respondent from executing the certificate of grant, he ought to have fast-tracked the necessary application so that it could have served the intended purpose. The application was filed on 20/11/2013 and the replying affidavit on 24/1/2014. Yet the appellant did not take due diligence to have the application heard without delay. When he appeared in court on 4/02/2014 the applicant told the court that title deeds have already been issued. This is about one year later and a lot of water may have passed under the bridge.

The respondent states that he has already taken his title while the applicant has been reluctant to do so. Probably he was for his appeal to be heard and determined. In the absence of any orders to restrain the respondent promptly after the confirmation of grant, the respondent continued to execute the grant.

It is my considered opinion that it would be a bit late in the day to issue the orders the applicant is seeking. Furthermore the applicant does not state up to what period the respondent ought to be

restrained. This court will not issue an order for an indefinite period in a case of this nature which is likely to cause injustice to other parties.

The appeal has also been delayed. If it was fast-tracked for admission and hearing, it would have been determined maybe by early 2014 considering that dates for civil appeals are available in this court. Any party who approaches the court for a remedy must apply due diligence to ensure he follows his case through.

The information provided by the applicant is very scanty and does not make up a *prima facie* case to justify issuing prohibitory orders against any title unless sufficient information is tabled before it in order to assess the impact such orders are likely to have on the respondent and other four beneficiaries named in the grant.

It is my finding that this application has no merit and it is hereby dismissed with costs.

DELIVERED, SIGNED AND DATED AT EMBU THIS 28TH DAY OF JANUARY, 2015.

F. MUCHEMI

JUDGE

In the presence of:-

Ms. Muthoni for Andande for the respondent

Applicant present in person

F. MUCHEMI

JUDGE