



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**SUCCESSION CAUSE NO. 1063 OF 2012**

***(IN THE MATTER OF THE ESTATE OF KINYUA KABUKI-(DECEASED))***

**HILLARY KINYUA KIIGE.....APPLICANT**

**-VERSUS-**

**ZAWERIA WANGARI MATHENGE.....RESPONDENT**

**AND**

**GEORGE MUCHIRI MARIRA.....INTERESTED PARTY**

**RULING**

The applicant and the interested party have lodged two distinct applications in this cause; the applicant's application is an undated motion filed in court on 6<sup>th</sup> August, 2014 while that of the interested party is also a motion dated 26<sup>th</sup> August, 2014.

The applicant's application is seeking in the main a prohibitory order to be issued in respect of land parcel **LR No. Chinga/Kagongo/43 (herein "the suit land")**.

This application was initiated in court through a certificate of urgency of 6<sup>th</sup> August, 2014 whereupon hearing counsel for the applicant ex parte, the court granted interim orders in the nature of an injunction against the respondent and the interested party restraining them from interfering with the suit land pending the hearing and determination of the motion.

It is this interlocutory order that provoked the interested party's application dated 26<sup>th</sup> August, 2014; in that application the interested party is simply seeking the orders granted to the applicant on 6<sup>th</sup> August, 2014 be vacated.

The two applications were heard together on 10<sup>th</sup> December, 2014. According to the applicant in the motion filed in court on 6<sup>th</sup> August, 2014, the respondent obtained a grant of letters of administration in respect of the estate of one Kinyua Kabuki (deceased) fraudulently. Apparently, the suit land was the only asset in the deceased's estate and it appears that upon confirmation of the grant, the respondent transferred the land to the interested party.

The applicant is aggrieved that the proprietary interest in the suit land could have been passed on to the interested party without his knowledge or consent when he has been in occupation of the land for the last

70 years. He is apprehensive that the interested party will evict him and indeed he has threatened to, now that the suit land is registered in his name.

Because he has alleged that the grant in respect of the deceased's estate was obtained fraudulently, the applicant filed a summons for revocation of grant on the same date he filed his motion. The basis of the summons is that:-

1. The proceedings to obtain the grant were defective in substance;
2. The grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
3. The grant was obtained by means of untrue allegation of fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently.

In the affidavit in support of the summons the applicant states that there was another succession cause pending in this court **High Court Succession Cause No. 612 of 2001** in respect of the estate of the same deceased person and in which the respondent is the protestor; the applicant says that he is surprised that the respondent could have filed another cause in respect of the same estate when the previous one is pending for determination.

The applicant has sworn that his father was the petitioner in the previous cause and together with one Simon Kiige Karianjahi they were appointed joint administrators in that cause; the applicant says he stepped in the shoes of his father when the latter died and to that extent he has a stake in the deceased's estate which should have been taken into account in the petition for letters of administration and the subsequent distribution of the estate of the deceased. By petitioning the court in a separate succession cause for the grant and by suppressing from the court the information that the applicant is a beneficiary to the estate in this latest petition, the respondent was not only fraudulent but that she has in effect disinherited the applicant.

In the affidavit which he swore in response to the applicant's application, the interested party stated that he purchased the land in question from the respondent and that he is now the registered owner of the land. It is not clear from his affidavit when he purchased the parcel of land but a copy of the certificate of official search attached to the applicant's affidavit sworn in support of his application shows that the interested party was registered as the owner of the suit land on 19<sup>th</sup> June, 2014. As far as the allegations against the respondent are concerned he says that he is a stranger to them.

In his application to have the injunctive orders issued in respect of the suit land vacated, the interested party has reiterated that he is the registered owner of the suit land and that he is a purchaser for value without notice.

Incidentally, the respondent did not file any sort of response to either of the two applications. When she was given chance to address the court at the time these applications came up for hearing, she only stated that she is not aware of succession cause no. 612 of 2001. On their part, counsel did not say anything more than the averments and depositions made by the respective clients in their pleadings and their sworn affidavits. I have considered their submissions in respect of the two applications.

The record shows that on 6<sup>th</sup> August, 2014, this court ordered for the production of the original record in succession cause no. 612 of 2001; pursuant to that order, this record was availed and as at the time the applications were urged before, the record was part of the record in this cause. It is apparent from that cause that it is in respect of the estate of the same deceased whose estate is in issue in the cause herein.

It is also apparent in **High Court Succession Cause No. 612 of 2001** that the respondent was the protestor in that cause; it is therefore clear that contrary to what she told the court, the respondent was not only aware of that cause but that she participated actively in it. The last entry in that record shows that the cause was stood over generally on 26<sup>th</sup> October, 2012 and nothing appears to have happened since then.

My reading of that record is that there were at least three persons interested in the deceased's estate; there was a petitioner, an objector and a protestor. Considering that an objection and a protest to grant of letters of administration had been filed in the cause, there is the lingering question whether the nature and extent of the objector's and the protestor's relationship to the deceased ought to have been established and whether they were entitled to a share of the deceased's estate and if so in what proportion. The answer to this question, amongst others that may arise, will obviously come out after the hearing and determination of the summons for revocation of grant. Before that time comes, it is necessary that what constituted the deceased's estate which is the suit land is preserved. For this reason, I would allow the applicant's application filed in court on 6<sup>th</sup> August, 2014 in terms of prayer 3 thereof and hereby order the issue of a prohibitory order against land parcel **LR. No. Chinga/Kagongo/43**. The effect of this order is that the interested party's application dated 26<sup>th</sup> August, 2014 is dismissed. Costs of both applications abide the outcome of the summons for revocation of grant. It is so ordered.

**Dated, signed and delivered in open court this 13<sup>th</sup> day of March, 2015.**

Ngaah Jairus

**JUDGE**