

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

SUCCESSION CAUSE NO. 411 OF 2011

(IN THE MATTER OF THE ESTATE OF GATHUA KABUCHA GITHUKU)

RUTH GATHONI GACHARA.....
.....APPLICANT

VERSUS

DAVID GITHUKU KIBOCHA.....1ST RESPONDENT

EVANSON GITHINJI KINYANJUI.....2ND RESPONDENT/ INTERESTED
PARTY/

RULING

The applicant filed a chamber summons dated 5th November, 2014 mainly seeking a prohibitory order against the respondents restraining them from interfering with the property known as **Title Number Konyu/Baricho/441** pending, I suppose, the determination of the proceedings to annul or revoke grant of letters of administration intestate issued in respect of the estate of one Gathua Kabocha Githuku (deceased). I say so because the application is made against the backdrop of a summons dated 15th February, 2013 filed by one Lucy Karungari Ndambi seeking to revoke or annul the grant of letters of administration intestate of the estate of Gathua Kabocha Githuku (deceased) made to the petitioner (the 1st respondent herein) on 16th August, 2011 and confirmed on 15th June, 2012.

In the summons for revocation or annulment of grant, the applicant also sought interim orders seeking to restrain the petitioner from selling or transferring several parcels of land including **Title Number Konyu/Baricho/441** which, as noted, is the parcel in issue in this application. The record shows that the on 23rd May, 2013, this court issued an order against the 1st respondent in terms of the prayers sought.

It is apparent, therefore, that there is already restraint order against the 1st respondent in respect of **Title Number Konyu/Baricho/441**. This application is seeking more or less a similar order except that it is sought against the 1st respondent together with the second respondent who has been introduced in the succession cause as an interested party. According to the applicant, **Title Number Konyu/Baricho/441** ought not to have been included amongst the assets of the estate or distributed as such. Briefly, the applicant's case is that if a prohibitory order against this property is not issued, there is the danger that the interested party who is also the 2nd respondent may dispose of the property or deal with it in a manner that may prejudice the outcome of proceedings to revoke or annul the grant.

The 1st respondent did not respond to the application; his co-respondent, however, responded and filed a replying affidavit in which he deposed that he purchased the parcel of land in issue for valuable consideration and that at the time of the purchase, no caution or encumbrance of whatever nature had been registered against its title.

The petition for letters of administration of the deceased's estate and the subsequent certificate of confirmation of grant made to the 1st respondent shows that **Title Number Konyu/Baricho/441** was amongst the several parcels of land listed as one of the assets of the estate of the deceased and which were transferred to the 1st respondent as the sole beneficiary. A copy of the green card exhibited on the applicant's affidavit shows that upon transmission, the land was transferred to the 2nd respondent.

At the hearing of the application, counsel for the applicant urged that the parcel of land in question belonged to one Gathua son of Wanjohi who, as I understood him, is the applicant's father. According to the applicant no succession proceedings were ever taken in respect of her father's estate and it is apparently for this reason that, in her view, this property ought not to have been included as one of the assets in the deceased's estate.

While opposing the application, counsel for the respondents submitted that if the applicant had any issue to raise with the 1st respondent succeeding the estate of Gathua son of Wanjohi, she ought to have challenged the succession proceedings in respect of that estate. Counsel urged that the 1st respondent was registered as the proprietor of the parcel of land in question way back in 1973 and since then the applicant had not taken any action on this registration.

After considering the parties' submissions, I find that the question whether **Title Number Konyu/Baricho/441** ought to have been part of the deceased's estate cannot be conclusively be determined at this stage; it is a question whose answer will probably come out after the hearing of the summons for revocation or nullification of the grant made to the 1st respondent.

It is also noted that, **Title Number Konyu/Baricho/441** is one of the properties at the centre of the grant sought to be revoked or annulled. If the summons for revocation of the grant will succeed, any action taken upon the authority of that grant including the transfer of any of the assets in the deceased's estate will, as a matter of law, be affected.

Considering these and other pertinent questions relating to **Title Number Konyu/Baricho/441**, amongst other assets listed as comprising the deceased's estate, that this court will consider in determination of the summons for revocation or annulment of the grant, it is prudent that this property be preserved pending the hearing and determination of the summons. It is for this reason that I allow the application dated 5th November, 2014 in terms of prayer (ii) thereof pending the hearing and determination of the summons for revocation or annulment of grant. The costs of this application shall abide by the outcome of that summons. It is so ordered.

Signed, dated, and delivered in open court this 24th April, 2015

Ngaah Jairus

JUDGE