



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
E.L.C.A NO 52 OF 2014
FORMERLY KERUGOYA E.L.C 310 OF 2013
FORMERLY EMBU E.L.C. 17 OF 2006

**ALICE NJURA NJERU (*SUING AS A PERSONAL*
REPRESENTATIVE OF NJERU NYAGA
(DECEASED).....PLAINTIFF**

VERSUS

STEPHEN NJERU G. NDWIGA.....1ST DEFENDANT
EMILIOI MWANIKI NJERU.....2ND DEFENDANT

AND

ALICE NJURA NJERU.....APPLICANT

RULING

1. This is a ruling on the preliminary objection of the 1st defendant. He has stated that this claim or suit is an abuse of the court process. According to him, it was improperly filed in this court. He says that the claim or suit is contrary to Section 76 of the Law of Succession Cap 160 Laws of Kenya. He has also stated that it is filed in contravention of Rule 44 (1) (2) of the Probate and Administration Rules.
2. The preliminary objection is opposed by the plaintiff. The plaintiff has stated in his written submissions that this court has jurisdiction to entertain the claim or suit. According to the plaintiff, the 1st defendant took out letters of administration and was confirmed as the administrator of the estate of the plaintiff. It has now turned out that the plaintiff was alive and was residing in Tanzania.
3. The facts of the case are not in dispute. It is common cause that the plaintiff while living in Tanzania was awarded land parcel number Ngandori/Kirigi/687 by his clan. Following this award, he was registered as owner of the suit land. While the plaintiff was in Tanzania he was presumed to be dead.
4. As a result, the 1st defendant filed succession proceedings in the court of the Senior Resident Magistrate at Embu in succession cause number 34 of 1985. As a result of that succession, the 1st defendant was issued with a confirmed grant. As a result he inherited the entire suit land in terms of the grant. He stated that the said grant has not been revoked or annulled.

5. Upon his return to Kenya, the plaintiff filed a case against the two defendants seeking a permanent injunctive relief to stop them from selling, mortgaging, alienating, exchanging or in any manner to stop interfering with the suit land pending the determination of the main suit.
6. The plaintiff sought a further order directing the Deputy Registrar of this court to execute all the necessary documents to effect transfer of the land ownership to the plaintiff.
7. According to Section 76 of the Succession Act, a grant of representation may at any time be revoked or annulled upon application by any interested party or of the court's own motion in the following circumstances:
 1. If the proceedings to obtain the grant were defective in substance.
 2. If the grant was obtained by means of untrue allegations or acts.
8. Furthermore, in terms of Rule 44(1) of the Probate and Administration Rules, an application for revocation or annulment shall be made to the High Court if the grant was issued by the court of the Resident Magistrate.
9. I have considered the rival written submissions of both parties, the pleadings and the preliminary objection. I find that this court has no jurisdiction to entertain this suit. The reason being that the 1st defendant was granted a confirmed grant in which he himself and the other beneficiaries distributed the estate of the deceased in terms of the grant issued by the court of the Senior Resident Magistrate.
10. In the circumstances, the preliminary objection is upheld and the suit is dismissed with costs to the 1st defendant.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **20th**day of
.....**APRIL**.....**2015**.

In the presence of Mr. Mugo for the plaintiff and Mr. Andande holding brief for Ms Njuguna for the first defendant.

Court clerk Mr Muriithi

J.M. BWONWONGA

JUDGE