

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 2031 OF 2011

IN THE MATTER OF THE ESTATE OF RAHAB WANJIRU MUGO (DECEASED)

RULING

1. The deceased died intestate on 16th September 2010. She is survived by one child David Victor Karanja. David Victor Karanja petitioned for grant of letters of administration on 13th September 2011 and a grant in respect of the same was issued to him on 30th January 2012. Subsequently Peter Mugo filed the current application under Section 76 of the Law of Succession Act and Rule 49 of the Probate and Administration Rules. The applicant seeks the following orders;

i. Prayers i and ii are spent

iii. That pending the hearing and determination of this summons inter partes and further pending the final distribution of the estate of the respondent, Anasia Gatiria Karanja be restrained from disposing or in any way by sale, transfer or charge, the suit premises being title no. **KARAI/GIKAMBURA/T.583**.

iv. That this court be pleased to revoke the grant issued herein to David Victor Karanja and all consequential orders and process therefrom.

v. That this honorable court be pleased to order the cancellation of the title No. **Title Karai/Gikambura/T.583** issued to the respondent Anasia Gatiria Karanja and instead thereof direct the District registrar of lands, Kiambu to rectify the register thereof to the original owner.

2. The applicant in his affidavit in support of the said application states that he is the son of Ruth Wanjiku Muchigi a sister to the deceased. That pursuant to administration of her mother's estate the deceased followed up on the matter and as a result was given 2 properties. **Dagoretti/Thogoto/T.79** and **Karai/Gikambura/T.583** and that he had been living in **Karai/Gikambura/T.583** for over 23 years. That on 10th June 2010 the deceased wrote a will in the presence of 2 witnesses Eliazar Kaigai Muroko and Humphrey Gitau Macharia where he was bequeathed the said property whilst bequeathing David Victor Karanja **DAGORETTI/THOGOTO/T/79**. That David applied for grant of letters of administration without disclosing to him or seeking his consent and that the said grant was issued without disclosure of material fact that he is also a beneficiary of the said estate and that the grant ought to be revoked. That David obtained title to the suit premises **Karai/Gikambura/T.583** and transferred the same to Anasia Gatiria Karanja on 12th March 2014, which transfer he claims was procured by fraud. He depones that he still resides in the said premises and the respondent has made attempts to evict him from the said property violently and forcefully and as a result he has sustained injury this he claims was reported at Kikuyu police station under **OB No.17/2/2014** and that the respondent intends to evict him from the said premises using a title that was procured fraudulently.

3. In essence the applicant seeks an injunction and revocation of the grant issued to David Karanja on 30th January 2012. From the court record the said grant was not confirmed. The said property in issue is title No. **Karai/Gikambura/T.583** which was subsequently transferred to Anisa Gatiria Karanja who is said to be the wife to the administrator of the deceased. There is an affidavit of service dated 20th April 2015 stating that the respondent was served through his advocate's office though they received the same they indicated that they no longer represented the said person as he died on 23/1/2014 and that they had not been served with the application dated 25/2/2015.

4. As it stands the sole administrator to the estate of the late Rahab Wanjiru Mugo, David Karanja is deceased and going by the return of service he died on 23/1/2014. That means there is no administrator currently to administer the deceased's estate. Though David obtained the said grant the same was yet to be confirmed and as such the administration of the deceased's estate is still incomplete. The records from Land Registry show that the property was transferred to Anisa Gatiria Karanja(the late David Karanja's wife) on 12/3/2014. I find the same is improper and contrary to section 55 of the Law of succession Act which provides that;

“ (1) No grant of representation, whether or not limited in its terms, shall confer power to distribute any capital assets, or to make any division of property, unless and until the grant has been confirmed as provided in section 71.”

5. The applicant has also fronted a will and is willing to proceed with the hearing of the application by calling the two witnesses that witnessed the same. This testimony in my view is crucial as it will enable this court to ascertain the validity of the said will before this court can make a finding whether or not to revoke the said grant issued to the Late David Karanja on 30/1/2012.

6. I find it is in the interest of justice to grant the injunction orders sought by the applicant to safe guard the subject matter. I therefore restrain the respondent Anasia Gatiria Karanja from disposing or in any way by sale, transfer or charge, the suit premises being title no. **KARAI/GIKAMBURA/T.583** in order to preserve the status quo as the applicant claims that the respondent intends to evict him from the said home using the title deed that was procured. The applicant has established a prima facie case with a probability of success and the balance of convenience tilts in his favor. I note that the application also seeks to revoke the grant issued to David Victor Karanja which was not yet confirmed. The injunction which this court has granted shall remain in force for 60 days from the date of this ruling. The applicant shall within the said 60 days endeavor to make the necessary arrangements to serve Anisa with the said application to enable her make the necessary arrangements to appear for hearing of the application or further direction in the matter. No orders as to costs. It is so ordered.

Dated, signed and delivered this **29th** day of **May** 2015.

R. E. OUGO

JUDGE

In the presence of:-

For the Applicant

For the Respondent

Court Clerk