



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

SUCCESSION CAUSE NO. 227 OF 2012

In the matter of the Estate of HARRISON NJAGI KANAKE (Deceased)

JESSE NJERU KANAKE..... APPLICANT

VERSUS

RAHAB RUGURU IRERI..... RESPONDENT

R U L I N G

This is a ruling on an application dated 22nd of December 2014 filed by Muthoni Ndeke & Co. Advocates on behalf of applicant Jesse Njeru Kanake against the respondent Rahab Ruguru Ireri. It seeks for the following orders;

- 1. Pending the hearing and determination of REVOCATION proceedings herein the Administrator/respondent herein, RAHAB RUGURU IRERI, PETER IRERI NJAGI and CHARLES FUNDI NJIRU, their agents and or servants and anybody working through them to be restrained from evicting, entering working or in any other manner interfering with the applicant's quiet occupation of the portions of land parcel number KAGAARI/KANJA/9553.*
- 2. That pending hearing and determination of revocation proceedings herein Honorable court be pleased to issue prohibitory orders to be registered against land parcels number KAGAARI/KANJA/9551,KAAGARI/KANJA/9552 and KAGAARI/KANJA/9553.*
- 3. That pending the hearing and determination of revocation proceedings herein Honorable court do stay any transfer, waste, dealing and or any alteration in respect of the current registration and status quo in land parcels Numbers KAGAARI/KANJA/9551, KAGAARI/KANJA/9552 and KAGAARI/KANJA/9553.*

The application is supported by the affidavit of the applicant sworn on 22nd of December 2014. He states that he is the brother to the deceased and that the respondent is the widow of the deceased. He further states that the respondent did letters of the administration and distributed the deceased parcel No. KAGAARI/KANJA/1612 to herself and two others. The applicant and his family reside on the said parcel which fact the respondent did not disclose to the court. The parcel of land was given to the deceased who was the first born hold in trust for himself and applicant. The deceased died before he gave the applicant his share. During the distribution the respondent did not give provision for applicant. She also failed to disclose the applicant was a beneficiary in the estate of the deceased. The applicant came to learn that the respondent had distributed the land when he was served by her son with a notice to vacate by the sons of the respondent.

The applicant states that he has extensively developed 1.5 acres of the land. The whole parcel has now been sub-divided into three portions LR NO. KAGAARI/KANJA/9551, 9952 and 9953. Unless the court grants the orders sought the applicant is likely to suffer loss in the event that the beneficiaries dispose of the said parcels.

The application was opposed by the respondent in the replying affidavit sworn on 30th of January 2015. She denies that the grant was fraudulently obtained and that she concealed any material facts to the court. She states that her husband was the third born in the family and that during the time of land demarcation and adjudication he was given land. The applicant and his other brothers were also given land. The land of the applicant is situated at Mugui and that is where he has always lived. It is denied that the applicant is a beneficiary to the estate of the deceased. She urges the court not to grant the orders sought.

Both parties filed written submissions to support their arguments. The applicant states that he is the youngest brother of the deceased and that the land LR KAGAARI/KANJA/1612 was given to them by the Marigu clan. The parcel of land was registered in the name of the deceased who is the elder brother with the arrangement that the deceased would later give him half share of the land. He denies that he holds any land at Mugui save for a plot measuring 1/8 of an acre which was allocated to him by the Government.

The applicant states that he has two brothers who are given land jointly at Kianjokoma. The land was registered in the name of one of the brothers to hold in trust for the young brother. He denies that he was a licensee with the permission of the deceased on his land as claimed by the respondent.

The respondent in her submissions stated that the applicant was aware of the succession proceedings but did not raise any objections. The grant has been fully implemented and there is nothing left to distribute to the applicant.

The respondent claims that the applicant was a licensee on the land of her husband. She does not deny that the applicant is still living on the land even after the death of the deceased. The respondent claims that the applicant was allocated his own land at a place called Mugui was not supported by any evidence. The applicant explained that he only owns a small plot at Mugui measuring 1/8 of an acre which was allocated to him by the Government. The respondent did not reply to this averment which may be construed to mean that the fact is admitted.

The applicant also claimed that he has two brothers who were also given land jointly by the clans during land demarcation and adjudication. The applicant claimed that just like his two brothers, the deceased and himself were also allocated a LR KAGAARI/KANJA/1612 jointly. The respondent did not comment about the pattern of the land allocation in the family jointly to the four brothers. She did not deny that the other 2 brothers of the deceased own/owed land jointly.

The respondent is the widow of the deceased. The law of succession act ranks her in priority to the brother in obtaining letters of administration in the estate of her husband. The applicant would come after the respondent and her children.

I am convinced that the allegation that the applicant had interest in the land KAGAARI/KANJA/1612 requires to be established through a tendering of evidence by both parties. The applicant has already filed summons for revocations of grant through which he intends to pursue his interest in the estate of the deceased.

In the view of the foregoing, it is in the interest of justice that the parcels resulting from the sub-division of LR KAGAARI/KANJA/1612 be preserved. These are LR Nos. KAGAARI/KANJA/9551, 9552 and 9553.

I find the application merited and orders sought are hereby allowed. Each party to meet their own costs.

DELIVERED, DATED AND SIGNED AT EMBU THIS 18TH DAY OF JUNE, 2015.

F. MUCHEMI

J U D G E

In the presence of:-

Ms. Muriuki for Muthoni for Applicant

Mr. Okwaro for Respondent