

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 3120'B' OF 2002

IN THE MATTER OF THE ESTATE OF LAWRENCE GITHINJI MAGONDU (DECEASED)

RULING

1. The Motion dated 24th July 2013 seeks the setting aside of orders made on 12th June 2013. It is premised on facts set out in the affidavits of the two applicants sworn on an unknown date in 2013.
2. The first affidavit is sworn by Charles Gitahi Githinji, the first administrator, while the second affidavit is by the other administrator, Moffat Magondu Githinji. The proceedings relate to a property known as House No. 36 Buru Buru Phase 5. It is claimed by the respondent to the application, Beatrice Makanga Sabana, allegedly on the basis of a sale transaction between her and the deceased. The administrators, who are the sons of the deceased, allege that the respondent never bought the property, and assert that the documents that the respondent is relying on are forgeries. They argue that they did not participate in the proceedings which led up to the ruling of 12th July 2013 because they were unaware of the proceedings for they had not been served with the process, and appear to blame their lawyers. They also allege that some of the documents allegedly filed by them in the cause were actually forgeries.
3. The first applicant administrator, Charles Gitahi Githinji, has attached a number of documents to his affidavit of an unknown date in 2013. A certificate of official search dated 5th July 2008 reflects the deceased as the owner of the subject property, Nairobi/Block 79/36, since 14th July 1994. There is a notice of appointment of Messrs. Igeria & Ngugi, Advocates, for the applicant administrators, dated 22nd May 2013 lodged in court on 3rd July 2013. There are letters on the matter from the said law firm with May and July 2013 dates. There is also a certificate of confirmation of grant dated 19th July 2004 and rectified on 18th October 2006 where Nairobi/Block 76/36 was not featured. To the affidavit for the second applicant administrator is attached a document showing the Police Occurrence Book reference number for the report allegedly made at BuruBuru Police Station to the effect that the house was vacant. A handwritten document allegedly prepared at the time of an alleged break into the house by the administrators supervised by the police is also attached.
4. Upon being served with the papers, the respondent swore an affidavit on 13th August 2013, which was filed in court on 14th August 2013. She argues that the applicants have always been aware of all the processes in the proceedings, yet on many occasions their advocates, though served, did not attend court. She denies that some of the court processes allegedly signed and filed by the applicants were forgeries contrived by her. She asserts that she has always been in occupation of the property since 2000, although she let it out to tenants in 2007. She has attached a bundle of documents to her affidavit to support her case.
5. The administrators responded to the respondent's replying affidavit by their joint affidavit sworn on 29th August 2003. They clarify that what they were not aware of was the application that culminated in the ruling of 12th June 2003, adding that their advocates then did not notify them of the application dated 29th June 2009 nor were they ever alerted of its coming up for hearing. They reiterate that the signatures on the alleged sale agreement were forgeries, saying that their father did not sell the property. They further state that they were unaware that their advocates withdrew from acting for them for they were never served with any application to cease acting. The first

applicant, in particular, denies having signed and filed a notice to act in person, a notice of admission of the case and the affidavit accompanying the same, all dated 22nd June 2009. He states that the signatures on the documents purported to be his was not his. They alleged that the matter was reported to the police, who are yet to come back to them. They both specifically deny service of particular court processes on them. They urge the court not to visit the mistakes of their advocates on them.

6. There are several other affidavits filed by the parties to counter the various positions. The respondent filed further affidavits on 9th September 2013 and 28th April 2014. There is a supplementary affidavit sworn by the second applicant on 18th March 2014. There are also on record detailed submissions by both sides. I need not go into the details of each of these documents.
7. Owing to the counter accusations in the numerous affidavits filed herein, I feel that justice will be served by hearing the applicants on the very serious allegations that they have made against the respondent. This would mean that I should set aside the orders that I made on 12th July 2013. The respondent shall not be prejudiced in any way as there is on record a caution against the title. The same should remain in force until further orders.
8. In the end, I will make the following orders on the application dated 24th July 2013:-
 - a. **That the orders made on 12th July 2013 on the application dated 24th June 2009 are hereby set aside;**
 - b. **That the application dated 24th June 2009 to be heard afresh by any Judge in the Family Division on a date to be given at the registry on priority basis; and**
 - c. **That costs shall be in the cause.**

DATED, SIGNED and DELIVERED at NAIROBI this 25TH DAY OF SEPTEMBER, 2015.

W. MUSYOKA

JUDGE