



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
SUCCESSION CAUSE NO. 62 OF 2012

In the matter of the Estate of MUGO MWONDU (Deceased)

NJIRU MWONDU..... 1ST RESPONDENT

VERSUS

NAOM WAMBETI JOHN.....2ND RESPONDENT

AND

JIM MURIITHI M’NJAUH.....APPLICANT/INTERESTED PARTY

R U L I N G

This is a ruling on an application seeking to set aside orders made by the court and issued on 13/11/2014 and to allow the interested party to file a reply to an application dated 3/4/2014. It also seeks for costs of this application.

The grounds relied on are that the applicant/interested party was not involved in this case although he is directly affected. The applicant argues that he has a credible response to the application dated 3/4/2014. The 1st respondent is hostile to the applicant/interested party plus his agents/employees causing them to feel insecure. It is further argued that it is fair and just that the applicant be granted an opportunity to highlight his issues before the court for determination of the said application on merit. The applicant also argues that he had filed his application without undue delay as required by the law.

In his submissions the applicant states that he is the bonafide purchaser of LR. KAGAARI/KANJA/3867 which was sold to him by the 2nd respondent upon conclusion of succession proceedings in the estate of her husband. The applicant took possession of the land immediately and the same is registered in his name.

The applicant further argues that the 1st respondent has no right over the land. He was aware of the succession proceedings instituted by the 2nd respondent but he failed to raise any objection. It is further argued that the grant confirmed on 20/12/2012 has been executed and hence the application should have been served upon all the parties who are likely to be affected by it.

The application was opposed by the 1st respondent sworn on 20/4/2015. He depones that the 2nd respondent is a wife to his late brother who was the registered owner of LR. KAGAARI/KANJA/1140 measuring 3 acres given to him by the clan “andu a njuki” during land adjudication period to share with the 1st respondent. The 1st respondent stated that he has lived on the land since 1958 and has since developed his portion. The deceased had sub-divided parcel No.1140 into 2 portions Nos.3867 measuring 1 acre and 3868 measuring 2 acres. The 1st respondent has settled on

parcel No. 3867 which is his rightful portion but was still in the name of the deceased at the time of his death.

The 2nd respondent filed succession proceedings in respect of the 2 parcels of land and was issued with the grant which was confirmed on 20/12/2012. She then sold parcel No. 3867 to the applicant/interested party. The 1st respondent states that he is still in occupation of parcel No. 3867. The orders given in the application dated 3/4/2014 should remain in force to preserve the disputed parcel pending determination of summons for revocation of grant.

The 2nd respondent was served with this application but did not file a replying affidavit.

The record shows that the 1st respondent filed summons for revocation of grant which was issued and confirmed in favour of the 2nd respondent. The 2nd respondent hurriedly entered into an agreement for land sale with the interested party in respect of KAGARI/KANJA/ 3867. The 1st respondent argues that the land sale agreement was fraudulent and was intended to defeat justice.

The 2nd respondent was all the time aware that the 1st respondent was in occupation of parcel No. 3867 and had even filed a suit in Runyenjes court PMCC No.2 of 2014. The applicant was also aware of the said occupation when he purchased the land. The 1st respondent states that he has no objection to the applicant being allowed into these proceedings as an interested party to defend his interests. However, the status quo should be maintained pending the determination should be maintained pending determination of the summons for revocation.

On perusal of the records, it is evident that the 1st respondent filed an application dated 3/4/2014 seeking to restrain the 2nd respondent from evicting him from LR. KAGARI/KANJA/3867. The 2nd respondent who was sued in that application was duly served. She failed to file a replying affidavit. The court gave orders as follows:-

- 1. That there be a stay of execution of orders issued on 20/12/2012 confirming the grant pending the hearing and determination of the application for revocation of grant.*
- 2. That the administrator Naom Wambeti be restrained from entering, evicting the applicant from LR. KAGAARI/KANJA/3867, disposing of the land, working or in any other manner, interfering with the applicant's quiet possession of land KAGAARI/KANJA/3867 pending the hearing and determination of the application for revocation of grant.*

The orders given by the court in the application dated 3/4/2014 were meant to ensure that the 1st respondent enjoyed quiet possession of LR. NO. 3867. This is the parcel in which he claims interest in the summons for revocation of grant which is still pending in court. At the time the application was filed, the only person whom the 1st respondent knew to be an affected party was the 2nd respondent. She was the administrator of the estate and had caused the land to be registered in her name. Service was effected on the 2nd respondent but she failed to file a replying affidavit. In essence this means that she was not opposed to the application. It is also noted that she has not filed any opposition to this application.

The applicant/interested party came into the limelight in these proceedings when he filed this application. He is claiming to be the registered owner of parcel No. 3867 which was sold to him by the 2nd respondent. It is not in dispute that he is an interested party in these proceedings and that he ought to be allowed to join this cause to defend his interests.

However, the interests of the 1st respondent who claims to have lived on the land for 56 years must be protected pending the hearing and determination of the summons for revocation of grant. It does not make sense to set aside the orders issued by the court on 13/11/2014 and proceed to re-hear the application dated 3/4/2014 afresh. The most important thing in these proceedings at the moment is the determination of the summons for revocation of grant. In the interest of justice, the court makes the following orders:-

1. *That the orders made on 13/11/2014 remain in force pending the hearing and determination of the summons for revocation of grant dated 28/10/2013.*
2. *That the applicant is hereby admitted into this cause as an interested party.*
3. *That the applicant/interested party be and is hereby allowed to file a replying affidavit to the summons for revocation of grant within 14 days.*
4. *That the 1st respondent or any other party moves the court for directions for the hearing of the said summons for revocation.*
5. *That each party meets their own costs.*

It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 22ND DAY OF SEPTEMBER, 2015.

F. MUCHEMI

J U D G E

In the presence of:-

Ms. Ndorongo for Applicant

Mr. Ithiga for 1st respondent

All parties present