



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**SUCCESSION CAUSE NO.66 OF 2011**

**IN THE MATTER OF THE ESTATE OF THE LATE NATHAN KARUINGI KAMORE  
(DECEASED)**

**SALOME WANGARI KARUINGI.....APPLICANT**

**VERSUS**

**EDWARD KAMORE KARUINGI.....RESPONDENT**

**RULING**

1. By the Summons dated 26<sup>th</sup> January 2015, the Applicant sought the following orders:

**a) pending the hearing and determination of this succession cause a permanent injunction be issued restraining Edward Kamore Karungi (co-administrator) from wasting, alienating, intermeddling with or disposing of the properties known as PLOT L.R.NO.NYANDARUA/NGORIKA/317/NGORIKASETTLEMENTSCHEME and L. R.NO.BAHATI/NAKURUNDUNDORI/259;**

**b) pending the hearing and determination of this succession cause a prohibitory order be issued restraining Edward Kamore Karungi (co-administrator) from wasting, alienating, intermeddling with or disposing of the properties known as PLOT L.R. NO.NYANDARUA/NGORIKA/317/NGORIKASETTLEMENTSCHEME and L.R. NO. BAHATI/NAKURUNDUNDORI/259;**

**c) this honourable court be pleased to make other or further orders as it may deem fit to meet the ends of justice; and**

**d) that the costs of this application be provided for.**

2. The application was supported by the affidavit of the applicant sworn on 26<sup>th</sup> January 2015 and a further affidavit sworn on 2<sup>nd</sup> February, 2015. It was opposed by the Respondent vide the Replying Affidavit sworn on 1<sup>st</sup> February, 2015.

3. By a ruling delivered on 31<sup>st</sup> January, 2014, this court revoked the letters of administration that had been issued to the Applicant on 21<sup>st</sup> May, 2012 and the Certificate of Confirmation of Grant issued to her on 15<sup>th</sup> February, 2015. The court appointed the Applicant and the Respondent as joint administrators of the deceased estate and further ordered that the title to the suit lands revert back to the deceased and

canceled any registration that had been made in favour of third parties.

4. Following this order a Grant of Letters of Administration Intestate was issued in favour of the Applicant and the Respondent on 31<sup>st</sup> January, 2014. After six months expired, the Respondent applied to this court for confirmation of the grant by way of the summons dated 20<sup>th</sup> August, 2014. The Grant was confirmed on 5<sup>th</sup> December, 2014.

5. The Applicant has now moved court for an interlocutory injunction restraining the Respondent from intermeddling with the estate pending the hearing and determination of this succession cause. She alleged that the Respondent had let the properties to third parties and intends to dispose them without the consent of the rest of the beneficiaries.

6. The Respondent's case was that the Applicant refused to apply for confirmation of the grant or to protest to the confirmation despite being served with both the application and the hearing notice. The Certificate of Confirmation of the Grant was issued after no objection was raised by the Applicant.

7. He denied that he had let the property to third parties or that he intended to sell them. It was his contention that once he was issued with the Certificate of Confirmation of the Grant he undertook the process of sub-dividing the property as per the confirmed grant in order to distribute to the beneficiaries their shares. Therefore, he contended that his actions were not unlawful.

8. The Respondent also argued that the He therefore urged the court to dismiss the application and make an order restraining the Applicant or members of the 2<sup>nd</sup> house from interfering with the subdivision of the properties by the District Surveyor Nyandarua.

9. The application was canvassed by way of written submissions. The Applicant's submissions were filed on 7<sup>th</sup> May, 2015. It was submitted for the Applicant that by instructing the District Surveyor to subdivide the properties without the consent of the Applicant who was his co-administrator, the Respondent was intermeddling with the estate of the deceased.

10. The Respondent relied on the submissions filed on his behalf on 8<sup>th</sup> March, 2015. It was submitted that the orders sought in the application cannot be granted as neither the application nor the succession cause is pending. The succession cause was concluded when the Certificate of Confirmation of the Grant was issued by the Court. That the Applicant is guilty of failing to disclose to the court material facts that he has involved her throughout these proceedings.

## **ANALYSIS**

11. The Applicant has sought preservative orders to restrain the Respondent from continuing with the subdivision of the estate and its distribution to the beneficiaries pending the hearing of this succession cause. Her case from her pleadings is that she was not consulted during the subdivision process.

**12. Section 45 of the Law of Succession Act, Cap 160** (hereinafter referred to as the Act) prohibits intermeddling with the estate of a deceased person and provides-

**“45. (1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.”**

13. Upon appointment of a legal representative, the estate of the deceased is vested in him by virtue of **Section 79** of the Act. As the legal owner, the legal representative has powers and duties under **Sections 82** and **83** to handle the property including suing and being sued, sell or collect any property as the deceased would have had he been alive save that he acts in a fiduciary capacity and is accountable to the beneficiaries.

14. The legal representative is only prohibited by **Section 55(1)** as read together with **Section 71 (1)** from distributing the capital assets of the deceased before the Grant of Letters of Administration is confirmed. It is the grant of confirmation that empowers an administrator to distribute the estate of a deceased. The two (2) sections provide as follows-

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

**71. (1) After the expiration of a period of six months, or such shorter period as the court may direct under subsection (3), from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower the distribution of any capital assets.”**

15. The Applicant and the Respondent were appointed joint administrators after the Respondent herein challenged a grant of letters of administration obtained by the Applicant in what the court found to have been in total concealment of facts from the 1st house where the Respondent herein belongs. The court made a finding that the procedure by which the grant was obtained was defective in substance and proceeded to revoke it.

16. The joint grant issued on 11th February, 2014 was confirmed on 5th December, 2014 following an application by the Respondent herein. Notably, the summons for confirmation of grant were served on the Applicant's Advocates as can be seen from annexure EKK5 annexed to the Affidavit of the Respondent herein. There is clear evidence of service on the firm of Osoro & Company Advocates, the Advocates on record for the Applicant then.

17. Despite that clear invite to participate in the confirmation process, the Applicant raised no objection to the confirmation of grant and on the 5th December, 2014 the grant was confirmed. It is instructive to note that the Applicant despite being a joint holder of the letters of administration made no step on her part to cause the confirmation of grant and by the time the grant was confirmed, almost a full year had elapsed since the issuance of the grant.

18. The Applicant has asked this court to stop the ongoing subdivision of the estate pending the determination of the succession cause. The question that follows is whether there is a succession cause that is still pending which will be defeated should the preservative orders sought not be granted.

19. To answer this question I refer to the decision of Musyoka, J in **The Matter of the Estate of Chege Kabiru (Deceased)**, [2013] eKLR where he explained the function of a court in a succession cause as follows-

**“The critical role of the Probate court is to manage the transition from death of the holder of the property to the heirs or survivors through distribution. Once the estate has been distributed and the property vested in new proprietors, the probate court would have no further role in the matter.”**

20. Therefore, all issues in the succession cause are geared to ascertaining what constitutes the net estate of the deceased, who are the beneficiaries and the manner in which that estate should be distributed. Once this is determined then the primary objective of the court is achieved. This determination is expressed in the Certificate of Confirmation of the Grant. It is for this reason that the Court of Appeal held in **Josephine Wambui Wanyoike v Margaret Wanjira & Others**, Nairobi Court of Appeal Civil Appeal No. 279 of 2003 [2013] eKLR held that once the grant has been confirmed, the only recourse available to a dissatisfied party is to apply for revocation or annulment of the grant under **Section 76** of the Act.

21. There is in force an uncontested certificate of Confirmation of the Grant that was issued to the Applicant and the Respondent. The Applicant has not sought to set this grant aside. There is nothing left for the court to determine in the succession cause because for as long as the confirmed grant is valid and

uncontested, the court is deemed to have pronounced itself on the beneficiaries and distribution of the estate and the succession cause is deemed as determined. Thereafter the administrators must undertake their task to distribute the property in terms of the confirmed grant. There is no application that is pending before the court for determination. The Applicant has not challenged the confirmed grant nor has she alleged that the Respondent is not distributing the property in as per the grant. Accordingly, the orders as sought cannot be granted.

22. Granting the prayers sought would be tantamount to sanctioning obstruction of execution of Court Orders as contained in the confirmed grant and the Certificate of Confirmation of grant issued herein. The least the Applicant could do in the circumstances and in her position as an administrator is to join hands with her co-administrator to give effect to the Orders of Court. It is in the interests of all the beneficiaries that the estate herein be distributed as per the Orders of the Court. Let the administrators herein proceed to discharge their duties as provided for under the **Law of Succession Act (Cap 160 Laws of Kenya)**

23. For the above reasons, I find that the application has no merit and dismiss it with costs.

**Dated, Signed and Delivered at Nakuru this 29th day of October, 2015.**

**A. K. NDUNGU**

**JUDGE**