



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

PROBATE AND ADMINISTRATION DIVISION

SUCCESSION CAUSE NO. 3519 OF 2003

IN THE MATTER OF THE ESTATE OF MARGARET WANJIRU RIBIRO (DECEASED)

HANNAH WANJIRA RIBIROOBJECTOR/RESPONDENT

V E R S U S

PETER KAROBIA RIBIRO 1ST ADMINISTRATOR/APPLICANT

MUNYWE RIBIRO MUNYWE.....2ND ADMINISTRATOR/APPLICANT

AND

MARGARET WAMBUI MUNGAIINTENDED THIRD PARTY

R U L I N G

1. In the summons dated 27th October 2014 brought under **section 76** of the **Law of Succession Act**, **Rules 44** and **49** of the **Probate** and Administration rules, the Applicant seeks orders that pending the hearing and determination of this application and pending the hearing and determination of the intended appeal this court do order stay of execution of the Ruling and orders granted by Kimaru J on 26th June 2014.
2. The application is premised on grounds that the Respondent fraudulently effected transfer of Title No. Kiambaa/Ruaka/639 to Margaret Wambui Mungai without valid land control board consent and court order authorizing eviction of the Applicants. That the Criminal Investigation Department requires a court order to commence investigations and furnish a report to this court and further that Margaret Wambui Mungai is a necessary party to this case to establish and prove the irregular and unlawful transfer.
3. In their joint supporting affidavit dated 27th October 2014 and filed in court on the same day, the Applicants deponed that they are sons of the deceased and administrators of the Estate of the deceased and the Respondent is their sister. That the Respondent fraudulently effected transfer of Title No. Kiambaa/Ruaka/639 to Margaret Wambui Mungai without valid land control board consent and court order authorizing eviction of the Applicants.
4. Hannah Wanjira Ribiro (hereinafter Respondent) filed a Replying affidavit dated 21st October 2014 in which she averred that she is the Objector in the summons for revocation of grant dated 4th May 2012, issued to Peter Karobia Ribiro and Munywe Ribiro Munywe. That after she was

confirmed to be the undisputed owner of the subject land (Title No. Kiambaa/Ruaka/639) in the ruling dated 26th June 2014, she proceeded to sell and transfer the said land to one Margaret Wambui Mungai. That therefore the application dated 8th July 2014 has been overtaken by events and cannot be entertained as the subject property has already changed hands to a third party who is not a party to these proceedings. The Objector urged the court to dismiss the application since it is misleading to the court and is an abuse of the court process.

5. On 15th October parties sought and were granted leave of court to proceed by way of written submissions. Mr. Odawa submitted for the Administrators that had the court fully considered the available evidence and factual position on the fraudulent transfers relating to land Title Kiambaa/Ruaka/639, it would have arrived at diametrically opposite conclusions and findings, as there no doubt that the Respondent fraudulently and unlawfully transferred the property from the deceased's Estate.
6. Mr. Odawa further submitted that the sole aim and vendetta of the Respondent is to disinherit and punish her brothers viz the Applicants, as it is not in dispute that she has never resided in built on, or carried out any activity on the land. That the Respondent will suffer no prejudice whilst the Applicants will suffer irreparably in the event the orders sought are not granted. That the intended appeal which has high chances of success will be rendered nugatory and a mere academic exercise as land once alienated can never be restored. He urges that the Applicants being very senior citizens and Mau Mau veterans who fought for the freedom of this country it would be extremely punitive to displace and evict them at this stage of their lives.
7. Learned counsel contends that the Respondent does not deny that the Applicants reside and actively derive their livelihood from farming the suit land, and that it is manifest that the Respondent has never possessed or entered the land. He urged the court to find and hold that the Applicants have established a prima facie case and that the order which readily avails itself at this stage is for issuance of the orders to preserve the status quo as the appellate court adjudicates on the appeal. That if the orders are not granted, the Applicants will suffer invariably and undeniably irreparably if evicted and the Appeal is eventually determined in their favour.
8. Mr. Isindu, learned counsel for the Respondent, filed brief submissions stating that the record is very clear and in particular the Respondent's Summons for Revocation of Grant and Supporting Affidavit dated 3rd May 2012, and the Replying Affidavit of Hannah Wanjira Ribiro dated 23rd July 2014. Mr. Isindu pointed out that the dispute has been arbitrated in various courts since 1979 and the original parcel of land being Title No. Kiambaa/Ruaka/135 had been shared equally among the Applicants and the Respondent. That the Applicants have been in occupation of their own portion of land, being Kiambaa/Ruaka/640 which is adjacent to the suit land.
9. Mr. Isindu submitted that Kiambaa/Ruaka/639 had never come up before in the proceedings and it is an afterthought for it to be introduced at this late stage to delay and derail the cause of justice. He argues that there can never be any plausible/conceivable appeal in view of the clear findings and sentiments in the various Rulings of the court.
10. I have perused the entire record of the court as pertains to this cause and note that Kimaru J, in his ruling of 26th June 2014 which is impugned, did observe that the deceased herein had challenged the Respondent's right to inherit the suit parcel of land in the Chief Magistrate's court at Kiambu. That the lower court had considered the grounds for the challenge and disallowed it. The deceased filed an appeal which abated upon her demise.
11. Kimaru J in the ruling of 26th June 2014 made a finding that the Applicants had exhausted all legal avenues available to them in pursuit of the claim over the suit land and that for all intents and purposes the suit parcel of land belonged to the Respondent herein. I also find that the suit parcel of land has changed hands and the title thereto transferred to a third party on 25th August 2014, who is already in occupation thereof, and the Applicants are fully aware of this.

12. For the foregoing reasons I find as did Kimaru J in the ruling of 26th June 2014 that the application under consideration is mischievous and an abuse of the court process. The prayers sought in the application which are for stay of execution of the orders of Kimaru J revoking the grant are not capable of being granted.

The application dated 8th July 2014 is dismissed for want of merit.

Costs to the Respondent.

SIGNED DATED and DELIVERED in open court this 25th day of November, 2015.

.....

L. A. ACHODE

JUDGE