

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO.2824 OF 2006

IN THE MATTER OF THE ESTATE OF AYUB NJOROGE KIBI (DECEASED)

MARY WANJIRU NJOROGE.....
.....APPLICANT

VERSUS

GRACE WANGARE
NJOROGE.....RESPONDENT

RULING

This is a long running dispute between the beneficiaries of the estate of Ayub Njoroge Kibi, the deceased to whose estate these proceedings relate. The deceased was married to two wives, namely Josphine Njoroge Mugure and Grace Wangare Njoroge. The dispute between the two widows and their children relate to how the properties that comprise the estate of the deceased are to be distributed. The case is part-heard before this court. The Applicant is the daughter of Josphine Njoroge Mugure, the first wife. The hearing of the case commenced before Njagi J. The Applicant's witnesses have testified. The Respondent's witnesses are yet to testify. According to the Applicant, the Respondent had interfered with the *status quo* by demolishing toilets and bathrooms that she uses with her tenants in one of the properties that is the subject of the succession dispute. It is her prayer that the Respondent be restrained from interfering with her usage of the toilets and the bathrooms pending the hearing and determination of the succession dispute. In response to the application, the Respondent has denied demolishing the toilets or disturbing the *status quo*. She has explained that she has erected toilets on her part of the suit parcel of land pursuant to a notice to abate nuisance which had been by the City Council of Nairobi on 30th May 2013.

During the hearing of the application, this court heard oral rival arguments made by the Applicant (who was acting in person) and Mrs. Ngugi who is acting for the Respondent. The parties basically reiterated the contents of their pleadings. The issue for determination by this court is whether the Applicant established a case to enable this court restrain the Respondent in the manner proposed by the Applicant. As stated earlier in this Ruling, this is a succession dispute. It is pending determination before this court. Before this court renders its Ruling, it is imperative that the parties maintain *status quo* on the ground pending distribution of the properties that comprise the estate of the deceased to the beneficiaries. From the complaint made by the Applicant, it is clear that the Respondent has interfered with the *status quo*. She has interfered with the toilets and bathrooms that are used by the Applicant and her tenants. The Respondent may have done so pursuant to a notice issued by the then City Council of Nairobi. But that is no excuse to deny the Applicant access to such a vital component of human survival. This dispute would not have arisen if the parties had been diligent in the pursuit of the hearing and determination of the succession dispute. Instead, they appear to be engaging in interlocutory applications which ultimately does not aid in the determination of the dispute.

In the premises therefore, I will order the Respondent to grant access to the Applicant to the toilets and bathrooms that she was using prior to the action that she took in implementing the directive to abate the nuisance. If such toilets and bathrooms are not in such a condition that they can be used, then the Applicant will use the toilets and the bathrooms erected by the Respondents in the premises pending the hearing and determination of the succession dispute. The parties are hereby urged to fix the cause for hearing as a matter of priority so that the real issues in dispute relating to the distribution of the properties that comprise the estate of the deceased can be determined once and for all. It is so ordered.

DATED AT NAIROBI THIS 29th DAY OF JANUARY, 2014

L. KIMARU

JUDGE