

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO.1750 OF 2008

IN THE MATTER OF THE ESTATE OF SAMUEL THUO KAMUYU (DECEASED)

GRACE NJERI THUO.....APPLICANT

VERSUS

JOHNSTONE KIMANI KAMUYU.....RESPONDENT

RULING

Grace Njeri Thuo, the Applicant herein moved this court by Notice of Motion made pursuant to **Rule 73** of the **Probate and Administration Rules** seeking orders from this court to restrain the Objectors from developing, constructing any buildings or in any other way interfering with the character of the property known as LR. No. Dagoretti/Waithaka/322 (hereinafter referred to as the suit property) pending the hearing and determination of the cause. The Applicant further prayed that the Objectors be ordered to pull down or remove any structures or building materials on the suit parcel of land that was constructed or deposited after this court issued an order of status quo on 22nd October 2010. The grounds in support of the application are stated on the face of the application. The Applicant swore an affidavit in further support of the application. The Respondent, Johnstone Kimani Kamuyu swore a Replying Affidavit in opposition to the application. It was his case that the Objectors had not breached the order of status quo issued by this court because the Objectors have been in possession of the suit parcel of land since 1969. He urged the court to dismiss the application.

Prior to the hearing of the application, the respective counsel for the Applicant and for the Objector filed written submission in support of their respective opposing positions. During the hearing of the application, Mr. Muriithi for the Applicant and Mr. Gakaria for the Respondent highlighted the rival submission. Mr. Muriithi stated that the Respondent had commenced construction of permanent structures on the suit property on the basis that the same belonged to him because the deceased held the title in his trust. He submitted that when the parties appeared before this court on 22nd November 2010, this court ordered the status quo to be maintained. It was his submission that the Objectors had misinterpreted the order to mean that they could develop the property. Learned counsel took issue with this interpretation. He was of the view that the order of status quo granted by the court meant that no development should be undertaken on the suit parcel of land until the hearing and determination of the dispute. He urged the court to grant the application with costs.

Mr. Gakaria for the Objectors, while conceding that the court had indeed issued an order of status quo, it was his submission that the Applicant had not established that indeed the Objectors had breached the said order by commencing construction on the suit property. He submitted that the photographs annexed to the affidavit in support of the application was no proof that the Objectors had interfered with the status quo. He explained that the court had already rendered a decision to the effect that the deceased held the suit property in trust for other members of the family. He submitted that the Objectors have been residing in the suit parcel of land since 1969. He stated that the manner in which the Applicant has brought this application did not conform with the procedure where a party seeks to cite another party for being in contempt of the orders of the court. He submitted that the Objectors could not be accused of being in breach of an order that was capable of various interpretations. He urged the court to dismiss the

application with costs.

This court has carefully considered the pleadings filed by the parties herein in support of their opposing positions in the application. It has also considered the rival submission made by learned counsel for the parties. There is a pending dispute in this court in relation to whether the suit parcel of land is part of the estate of Thomas Kamuyu Thuo – deceased or part of the estate of Samuel Thuo Kamuyu, the deceased in this case. The dispute was considered by Rawal J (as she then was) in **Succession Cause No.730 of 1995** in the **Matter of the Estate of Thomas Kamuyu Thuo – deceased**. In her considered Ruling delivered on 21st November 2008, the learned Judge held that the deceased in this case held the suit property in trust for members of his mother’s family. That decision seems not to have resolved other outstanding issues between the beneficiaries of the estate of the deceased in this case. That is an issue that will be heard and determined by this court.

Pending the hearing of the case, this court had directed that status quo in respect of the suit property be maintained pending the hearing and determination of the dispute. It is the Objector’s case that the order of status quo that was issued was vague and was incapable of unambiguous interpretation. On her part, the Applicant is clear that the order of status quo meant that no physical development should be commenced on the suit property pending the hearing and determination of the dispute. This court is clear of what it meant when it issued the order of status quo. The parties were to remain in the status that they were living on the land at the time the order of the court was issued. That clearly meant that no party was allowed to change the character of the suit property that existed at the time the order was issued pending the hearing and determination of the dispute. The Applicant, prima facie, established that indeed the Objectors had commenced construction of permanent structures on the suit parcel of land contrary to and in breach of the order of status quo that was issued by this court. The Objectors cannot escape from the legal obligation placed on them not to interfere with the physical character of the suit parcel of land pending the hearing and determination of the dispute. The Objectors have clearly breached the order of this court. There are hereby ordered to cease any further construction on the suit parcel of land pending the hearing and determination of the dispute.

In the premises therefore, this court allows the application by the Applicant in terms of Prayers (a) and (b) of her application dated 23rd February 2012. Those prayers are granted pending the hearing and determination of the dispute. The Objectors shall pay the costs of the application. The parties are ordered to fix the matter for hearing as a matter of priority so that all the issues in controversy can be heard and determined once and for all. It is so ordered.

DATED AT NAIROBI THIS 22ND DAY OF APRIL, 2014.

L. KIMARU

JUDGE