

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO: 527 OF 1981

IN THE MATTER OF THE ESTATE OF MBIYU KOINANGE - (DECEASED)

RULING

1. The summons dated 1st April 2014 is by the Karura Community Chapel. It is supported by the affidavit of Ngari Kariithi, the Senior Pastor of the said church. The church seeks to be enjoined to the ongoing proceedings in this cause as an interested party.
2. The principal case by the church is that it entered into a sale agreement with the administrators of the estate of the deceased for sale of three acres to the church out of LR No. 22 commonly known as Closeburn Estate. The church complains that the estate has not fulfilled the terms of the sale, which included the building of an access road and a bridge.
3. When Mr. Kiche for the applicant appeared before me on 25th March 2014, I directed him to serve the application on the respondents. Mr. Kiche did serve the application. None of the respondents filed replies to the application. Mr. Kiche argued the application on 8th April 2014. He urged the court to enjoin the church to the proceedings on account of its having entered into a sale agreement with the estate.
4. Counsel appearing for the respondents responded orally to the application, Mr. Gikandi, Mr. Odhiambo and Mr. Kihunyo addressed the court. They were unanimous that the church is entitled to 3 acres out of Closeburn Estate, that is to say the former L.R. No. 22. They however took the view that it would not be prudent to enjoin the church to these proceedings. One reason given by counsel is that these proceedings are on their tail end and no purpose would be served by the joinder. The other reason is that the church is, strictly speaking, not a beneficiary of the estate and need not therefore participate in the proceedings relating to the distribution of the estate. Thirdly, it was argued that if the church feels that there is a breach of the terms of the sale agreement, then it ought to proceed against the estate in a civil suit filed at the land court.
5. I agree with the sentiments expressed by counsel for the respondents. The current proceedings are at the tail end. I am currently hearing the last witness. I do not think enjoining the church at this stage will serve any purpose at all. Secondly, the issue of the 3 acres sold to the church by the administrators was placed before me by the witnesses who have so far testified. None of them appeared to be opposed to the said 3 acres being excised in favour of the church. Consequently, I do not believe that the church will have anything new to place before me regarding the matter.
6. In view of the above, I hereby decline the application dated 1st April, 2014. The same is hereby dismissed. There will be no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 15th DAY OF APRIL, 2013.

W. Musyoka

JUDGE

In the presence of Mr. Kiche advocate for the applicant.