

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

SUCCESSION CAUSE NO. 26 OF 2012

JECINTA WAMBUI MUCHUNU.....PETITIONER/APPLICANT

VERSUS

KAHINDO NJARA.....OBJECTOR/RESPONDENT

RULING

The applicant filed summons under **sections 73 and 49 of the Law of Succession Act** and **Rule 73 of the Probate and Administration Rules** seeking, in the main, to have the caution on land parcel, **Loc 19/ Gacharageini/418** lodged by the respondent removed.

The summons was supported by the affidavit of the applicant sworn on 24th January, 2014.

Amongst the grounds upon which the summons was based was that while the applicant was in the course of concluding the succession cause herein, she discovered that the respondent had lodged a caution on the land parcel that forms the estate of the deceased.

It was the applicant's case that the caution was lodged out of bad faith and more particularly to frustrate the succession cause herein considering that it was lodged after the death of the deceased who was the registered proprietor of the land in question.

Prior to her death the deceased and the respondent had a dispute over the ownership of the parcel of land that now forms the estate of the deceased. The respondent initiated the claim at Mathioya Land Disputes Tribunal and later it went to the Provincial Land Dispute Appeals Committee. The applicant lost at the two tribunals.

The respondent appealed to the High Court to challenge the decision of the Land Tribunal and the Appeals Committee. Interestingly, although the Respondent instigated the claim at the dispute's tribunal and the appeals committee, he appeared to challenge their jurisdiction to determine the very disputes he had lodged before them. The High Court, in its decision delivered on 7th November, 2008 agreed with him and effectively nullified their awards. Since then, the respondent took no other action apart from lodging the caution in issue after the deceased died.

The applicant applied and was granted letters of administration intestate in respect of the estate of the deceased in the succession cause herein. No objection to the grant of letters has been filed against the grant of the letters of administration and neither has any person including the respondent challenged the grant.

When the applicant's summons came up for hearing on 10th February, 2014, the respondent asked for an adjournment on the ground that his advocate was held up in Nyeri. The application for adjournment was granted and the hearing was put off to 21st March, 2014.

On 21st March, 2014, Mr. Kibathi purporting to hold brief for a Mr Macharia for the respondent applied for an adjournment on the ground that the said Mr Macharia was held up in a co-operative tribunal case. On this particular occasion the said Mr Macharia was seeking leave to file a replying affidavit as well.

It emerged that as at 21st March, 2014 there was nothing on record to indicate that any advocate,

including the said Macharia, had been appointed to act for the respondent; it would follow therefore that even Mr Kibathi could not be said to have any or any valid instructions to hold brief for an advocate who was not on record.

In these circumstances, the court rejected the application for an adjournment since there was no good reason why the adjournment sought should be granted. Again there was no explanation why a replying affidavit or any grounds of objection had been filed in opposition to the applicant's summons when there was evidence on record that the summons had been served way back in January, 2014.

After considering the applicant's summons and in view of the fact that it was not opposed, I am satisfied that it is merited and it is hereby granted to the extent that the Land Registrar in whose jurisdiction land parcel **Loc. / Gacharageini/418** falls is ordered to remove the caution registered on that parcel of land. The respondent shall also bear the costs of this application.

Dated, signed and delivered in the open court on 10th April, 2014

Ngaah Jairus

JUDGE