



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
SUCCESSION CAUSE NO. 315 OF 2010

N THE MATTER OF THE ESTATE OF JOSPHAT NJOKA MBIRIAI (DECEASED)

JOYCE WANJUKI NJOKA.....1ST APPLICANT/ADMINISTRATRIX

GRACE KARAU NJOKA.....2ND APPLICANT/ADMINISTRATRIX

TERESIA GATURI NJOKA.....3RD APPLICANT/ADMINISTRATRIX

VERSUS

ROBERT NJOKA MUTHARA.....RESPONDENT

R U L I N G

This is the Chamber Summons dated 25th July 2012 filed by the three administratrixes herein seeking the following orders:-

(a) That Robert Njoka Muthara be ordered to surrender the original Title Deeds of the below named parcels of land to the administratrixes of the estate of Josphat Njoka Mbiriai Alias Njoka Mbiriai namely:-

- i. *Gaturi/Nembure/104*
- ii. *Gaturi/Nembure/268*
- iii. *Gaturi/Kevote/T.147*
- iv. *Gaturi/Kevote/T.148*
- v. *Gaturi/Nembure/T.23*
- vi. *Gaturi/Karingari/T.42*
- vii. *Gaturi/Karingari/T.69*
- viii. *Embu/Gangara/1779*
- ix. *Embu/Gangara/2377*
- x. *Kagaari/Weru/2248*
- xi. *Kagaari/Weru/1582*
- xii. *Gaturi/Karingari/T.18*

(b) That the Respondent Robert Njoka Muthara be ordered to render a full and accurate Statement of accounts of the proceeds from Mbiriai Farm Coffee Factory No. BD0001 which is part of the estate of Josphat Njoka Mbiriai deceased, for the years 2000 upto 2012 amounting to over Kshs.20,000,000/= within 21 days from to date of this order.

(c) That the Respondent Robert Njoka Muthara be ordered to surrender and/or to pay the said proceeds from Mbiriai Farm Coffee Factory to the estate of Josphat Njoka Mbiriai, to be held in a

Bank Account managed by the Administratrixes, within 30 days from the date when the full and accurate accounts are rendered by the Respondent.

(d) That the Respondent be ordered to stop inter-meddling with the estate of Josphat Njoka Mbiriai and specifically Mbiriai Farm Coffee Factory until this succession Cause is finalized.

(e) That the Respondent do furnish to the Administratrixes an up to date Statement of Accounts and/or information of the Loans procured by the Respondent from the Industrial and Commercial Development Corporation (ICDC) on the security of Land Parcels Numbers Kagaari/Weru/2248, Kagaari/Weru/1582 and Gaturi/Nembure/104 and specifically the following information;

- i. **How much money was procured?**
- ii. **How much has been paid to date?**
- iii. **What is the balance of the loan outstanding?**
- iv. **What were the loan periods?**

(f) That the Respondent be ordered to furnish to the Industrial and Commercial Development Corporation (ICDC) other securities of his own and to have the title deeds of land parcels number Kagaari/Weru/2248, Kagaari/Weru/182 and Gaturi/Nembure/104 discharged and released to the Administratrixes of the estate of Josphat Njoka Mbiriai within such time as the Court will order.

(g) That costs be provided for.

1. The application is supported by the affidavit of Grace Karau Njoka the 2nd applicant. She is one of the widows of Josphat Njoka Mbiriai the deceased herein. There is another widow who is not included in this application.
2. The Respondent Robert Njoka Muthama is one of the several children of the deceased. Grace (2nd applicant) has averred that the Respondent has in his possession 12 title deeds of the deceased's land as pleaded in paragraph 5 of her affidavit.
3. She states that the Respondent has used some of the title deeds to procure loans from ICDC and has not repaid the loans.

In brief they allege the Respondent is inter-meddling with the deceased's estate as shown in paragraph 7-14 yet this estate has not been distributed to the beneficiaries.

4. And the above being the position the applicants are now seeking the above orders for protection of the deceased's estate.

5. The Respondent in his replying affidavit sworn on 5/12/12 has averred that the deceased left a Will upon his death. And he is named as the executor of the Will.

6. He further states that the titles complained of were given to him by the deceased and he consented to their being charged.

7. He has also stated that there is a pending succession cause in respect of the deceased herein. It is Embu High Court Succession Cause No. 200/2010 which was filed earlier than this present one No. 315/2010.

8. The Respondent has also averred that MBIRIAI FARM BD 001 does not belong to the deceased's estate but to him (RNM1&2). And further that acting as the executor of the deceased's Will he settled all the beneficiaries.

9. He has also raised an issue of being treated unfairly in this matter in terms of hearing dates. On this he says in spite of having filed an application for revocation of grant the registry staff have failed to give him a hearing date but somehow dates are available for the Applicants.

10. The 2nd Applicant filed a supplementary affidavit sworn on 19/8/2013 after obtaining leave from the Court on 17/12/2012. In it she avers that the Respondent's complaints contained in his replying affidavit are not relevant to their application.

11. She wants all the assets of the deceased's estate ascertained. She denied that the Respondent had distributed any properties as he had no authority to do so.

12. She also averred that the Respondent had unlawfully used a limited grant issued to him by the court (GKN2) to change the particulars of Registration of MBIRIAI FARM (GKN3).

13. In his further replying affidavit he reiterates that the father left a WILL. And that the loans taken on the properties were with the deceased's consent and for his own benefit. The same are now liabilities to the estate.

14. The counsel for both parties agreed to and did file written submissions.

15. Mr. Okwaro for the Applicants has submitted that the Respondent had no right to distribute the deceased's estate as he is just one of the beneficiaries.

16. He has extensively submitted on the validity of the alleged WILL.

17. He has also submitted that the Respondent unlawfully used a limited grant meant for Embu RMCC No. 3/2000 to transfer Mbiriai Farm to himself.

18. Mr. K. Itonga for the Respondent submitted that the file Embu Succession Cause No. 200/2010 is for grant of probate for Will. In this file are three applications for revocation of the grant issued to the Applicants. The same have not been heard.

19. That the application before the Court presupposes that the applicants are bonafide administrators in spite of the pending applications.

20. He further submitted that the WILL had not been challenged by the Applicants. And that the Respondent had lawfully acquired Mibiriai farm which is not part of the estate of the deceased.

21. He requested for the dismissal of the application.

22. The main issue for determination is whether the applicants have satisfied the Court on the issuance of the orders sought.

23. I have perused this file and I do note that Grant of Letters of administration were issued to the applicants and Margaret Kairu Njoka on 2nd March, 2011.

This same Margaret Kairu Njoka filed an application for revocation/annulment of grant dated 22nd November 2011. While Robert Njoka Muthara the Respondent filed a similar application dated 21st November 2011. Both applications have not been heard nor direction taken.

24. I have also perused Embu High Court Succession No. 200/2010 in respect of the same estate. It is obvious that the said matter was filed earlier than this present one.

25. The fact that a grant of probate for WILL has not been issued therein was not reason for a parallel file to be opened and letters of grant sought and obtained.

26. In the said file Embu High Court Succession No. 200/2010 the Applicants herein plus Margaret Kairu Njoka filed a Notice of Objection to the said Will on 22/6/2011. The Notice of Objection was filed by Ms. Duncan Muyodi & Co. Advocates. It is therefore clear that the Applicants were aware of the existence of High Court Succession Cause No. 200/100 filed on 14/5/2010. The present cause was filed

on 30/7/2010.

27. The law does not allow more than one cause to be filed in respect of one deceased's estate. It is clear from the above that there are two succession cause filed in respect of the estate of the deceased JOSPHAT NJOKA MBIRIAI Alias MBIRIRIAI.

28. First and foremost this Court has to determine the validity of the alleged WILL left behind by the deceased.

The reason is that if there was indeed a written WILL what was to be issued was a grant of probate for WILL, and not letters of administration as is the case here. The letters issued in succession cause No. 315/2010 will not be confirmed until the issue of the Will is determined.

29. As the court establishes the validity of the WILL the assets of the deceased's estate must be preserved.

30. The Respondent has admitted being in possession of the title deeds demanded for by the applicants.

Since there is a dispute over these properties, this Court must ensure the said properties are preserved even though this was not asked for.

31. I therefore order that an order of inhibition issues against all the lands mentioned in prayer (b) of the application dated 25/7/2012.

32. The other prayers cannot issue in view of the fact that the validity of the WILL has yet to be established.

Such determination can only be done in Embu High Court Succession Cause No. 200/2010 and not the No. 315/2010. Once the above determination is made it will be known if the grant issued herein will proceed to confirmation or not.

33. I therefore direct that succession cause No. 315/2010 be consolidated with succession Cause No. 200/2010. The lead file will be succession cause No. 200/2010. Counsels are directed to act accordingly in line with the above directions. The application dated 12/7/2012 is therefore found to lack on merit at this stage. It is dismissed.

No order as to costs.

DELIVERED, DATED AND SIGNED AT EMBU THIS 19TH DAY OF MAY 2014.

H.I. ONG'UDI

J U D G E

In the presence of:-

Mr. Githinji for Muthoni for 3rd Applicant

Mr. Okwaro for Petitioners/Applicants

Njue CC

