



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JR MISC. CIVIL APPLICATION NO. 206 OF 2011

REPUBLIC.....APPLICANT

VERSUS

THE LAND REGISTRAR, KIAMBU.....RESPONDENT

AND

HANNAH WANJIRA RIBIRO.....INTERESTED PARTY

EX PARTE: PETER KAROBIA RIBIRO & MUNYWE RIBIRO MUNYWE

RULING

1. The ex parte applicants herein, **Peter Karobia Ribiro & Munywe Ribiro Munywe**, instituted these proceedings against the Respondent, the Land Registrar Kiambu seeking an order for mandamus compelling the Respondent to register the ex parte applicants as the registered proprietors of Land Parcel No. Kiambaa/Ruaka/639.
2. The applicant's case was that they are sons and beneficiaries OF THE Estate of their late mother, **Margaret Wanjiro Ribiro** who died on 13th April, 1998 and that they obtained letters of administration to the Estate of the said deceased in High Court Succession Cause P&A No. 3519 of 2003 which grant was confirmed on 10th November, 2004 whereby the Estate of the said deceased comprising of LR No. Kiambaa/Ruaka/639 measuring 2.30 acres was to be shared by the ex parte applicants in equal shares.
3. It was the applicants' case that they presented the said confirmation of grant to the Respondent to facilitate transfer of the said property into their names as the registered proprietors thereof by transmission but the Respondent for no good reason refused and/or failed to effect the said registration.
4. When the matter came up for hearing before me on 14th November, 2013, **Mr Ngugi**, learned counsel for the applicant informed the Court that in view of the ruling by **Kimaru, J** on 26th June, 2013 in Succession Cause No. 3519 of 2003 – In the Matter of Margaret Wanjiro he had advised his Clients accordingly but they were of a different view.
5. On behalf of the Interested Party, **Mr Isindu** sated that the substratum of the Motion herein had been removed by the said decision of **Kimaru, J** which decision revoked the grant the subject of these proceedings hence the application ought to be struck out with punitive costs to the Interested Party in light of the numerous applications filed by the applicants.
6. I have considered the submissions made by counsel herein.
7. It is clear that the ruling by **Kimaru, J** on 26th June, 2013 was made in the same Cause in which the ex parte applicants were granted letters of administration and which was the basis upon which these proceedings were instituted. In that decision, **Kimaru, J** after hearing the parties found that

the Respondents therein who are the applicants in the instant application concealed from the Court the fact that the suit parcel of land, (which is the same suit the applicants seek to compel the Respondent to register in their names in the present case), did not in actual belong to the estate of their deceased mother but belonged to the applicant therein, **Hannah Wanjiro Ribiro**, the interested party herein.

8. The learned Judge proceeded to revoke the said grant in so far as it referred to LR No. Kiambaa/Ruaka/639, the land parcel which also forms the subject of these proceedings. The Court went ahead to hold that the said land parcel belonged to the said interested party.
9. With the said decision, it is clear that the substratum of this Motion also disappeared. The issue of the disappearance of the substratum of a suit was dealt with by the Court of Appeal in **Theuri vs. Law Society Of Kenya [1988] KLR 334** where **Apaloo, JA** (as he then was) expressed himself as follows:

“Whether in any particular cause or matter, adjournment should be granted or not, is a matter for the exercise of judicial discretion and like all discretion must be exercised judicially and on the facts of each particular case. The question to be asked is whether the facts of the case are such that no reasonable judge would refuse an adjournment. The appellant obliged the Society to go to court and defend itself against a threatened order of injunction. The appellant had set on foot an incompetent action and the Society pointed this out but the appellant retorted that it was a trivial technical point. It was not. It was a substantial point that went to the jurisdiction of the court. When the appellant realised the way in which the wind might blow, he said the court should allow him time to file the suit and that “this matter be held in abeyance”. Why should the Society have an application, which had no substratum remain hanging on its neck? The Judge was entitled to refuse to grant an adjournment and was right in doing so.”

10. In the present case, once the learned Judge revoked the grant which was the basis upon which the applicants pegged their claim to the suit land parcel, the applicant’s cause of action was no more. Instead of realising the way in which the wind was blowing the applicants nevertheless was of the view that they could soldier on. One would have expected them at least to retreat and strategise afresh but that option to them was out of question.
11. As was held by **Omolo, JA** in **J P Machira Vs. Wangethi Mwangi & Another Civil Appeal No. 179 of 1997:**

“Although disputes ought to be heard by oral evidence in court, there is no magic in holding a trial and receiving oral evidence merely because it is normal and usual to do so... A trial must be based on issues otherwise it may become a farce.”

12. In light of the decision made by **Kimaru, J** in the said Succession Cause, it is my view and I so hold that it would be pretentious for this Court to purport to hear this Motion. With the said decision this Motion also died and it should be laid to rest peacefully in the grave and ought not be resurrected with the idea that there is still some spark of life in it. Accordingly this Court’s duty is simply to conduct a requiem mass for it and lay it to rest.
13. In the result the Notice of Motion dated 24th October, 2011 is struck out with costs to the Respondent and the interested party to be borne by the applicants.

Dated at Nairobi this 28th day of July, 2014

G V ODUNGA

JUDGE

Delivered in the absence of the parties.

Cc Kevin