

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NO. 514 OF 2005

IN THE MATTER OF THE ESTATE OF THE LATE STANLEY MAINA KARIUKI

LUCY KABIRI MAINA.....PETITIONER

VERSUS

GRACE WAMBUI MAINA.....RESPONDENT

RULING

The summons dated 19/9/2013, was filed by Lucy Kabiri Maina seeking orders that the court do issue conservatory orders restraining the respondent, Grace Wambui Maina from selling, transferring, charging, leasing or dealing in any other way with land **Kabazi Munanda Block 1/297** pending hearing and determination of the instant succession cause. The application is premised on grounds found in the body of the application and an affidavit sworn by the applicant and a further affidavit dated 4/9/2013. Both the applicant and the respondent are wives of the deceased, Stanley Maina Kariuki who died on 17/1/2003. Grant of letters of administration were issued to the applicant on 9/3/06 and the case is yet to be determined. She deposed that a person has encroached on parcel Kabazi Munanda Block 1/297 and that the stranger is carrying out developments without the sanction of the applicant; that the said stranger is intermeddling with the estate with a view to dispossessing the applicant. In the further affidavit she deposed that though the deceased had taken a loan of Kshs.300,000/- from National Bank, it had been fully repaid and that in any event if there was any outstanding loan both houses have to be involved. The applicant has learnt that the buyer of piece of the land is one Harrison Wambugu Kingori and there is an intention to sell more land.

The application was opposed and the respondent filed a replying affidavit dated 1/10/2013 in which she deposed that the deceased had taken a loan with National Bank Ltd using the title Kabazi Munanda Block 1/297 as security and had a balance of Kshs.3,191,191.58 at the time of his demise; that the Bank was threatening to sell the land and she is the one who lives on the said land whereas the respondent lives on another parcel; that after pleading with the Bank, the bank advised that part of the land be sold to pay for the loan to avoid the auction and it is what led to Harrison Wambugu buying 4 acres from the said parcel and that he has been in possession since 2006. She annexed banking slips GWM 3(a) to GWM 3(l). She also deposed that the buyer built a house in 2010 and that she has no intention of selling the rest of the land.

I have considered both the affidavits sworn by the parties and submissions by counsel. The respondent does not deny having disposed of part of the land, the subject of the deceased's estate when the bank threatened to sell the land by public auction to recover an outstanding loan. It is evidenced by the annexures to the application. It seems that sale did not take place recently. It is way back in 2006. It is worth noting that the two widows of the deceased filed different petitions. Lucy Kabiri filed Succession Cause 514/05 in which she was issued with grant dated 9/3/2006. On the other hand, Grace Wairimu filed Succession Cause 6/2010 in which she was issued with grant. When Grace purportedly disposed of the land to one Harrison Wambugu to service the loan, she was not even an administrator. However, the applicant was appointed an administrator in 2006 and as administrator she had the duty to gather the assets of the estate and settle the debts. It seems she was aware of the loan with National Bank of Kenya Ltd and should have not sat back but have found ways of settling the debt. Maybe she did not take any action because she does not reside on the said land. But the said land being part of the deceased's estate, she had an interest.

Distribution is yet to be done and it is important that there should be no intermeddling with the estate. If any need arises, both administrators have to agree or if they do not, whoever is aggrieved must approach the court to give directions.

It has not been denied that the sale took place in 2006 and that the house has already been built on the said land, to be specific in 2010. It is surprising that the applicant waited this long. There is no evidence that the respondent intends to sell any part of the land belonging to the estate. but to ensure that the deceased's estate is not wasted before distribution, I hereby grant an order restraining either of the administrators from in any way intermeddling with the estate until distribution is done. Costs be in the cause.

DATED and DELIVERED this 25th day of July, 2014.

R.P.V. WENDOH

JUDGE

PRESENT:

Mr. Njuguna for the petitioner

Mr. Muhia for the respondent

Kennedy – Court Assistant