



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

SUCCESSION CAUSE NO. 276 OF 2009

**IN THE MATTER OF THE ESTATE OF GATORE KIONGO ALIAS GATORE KIONGE
(DECEASED)**

REGINA WAIRIMU GATORE.....PETITIONER/RESPONDENT

VERSUS

PETER MWANGI GATORE.....OBJECTOR/APPLICANT

RULING

1. This Ruling relates to an application by way of a Notice of Motion dated 11th November 2013 in which the Applicant/Objector seeks the following orders -

(a) a Certificate of Urgency (already spent),

(b) an order to the District Land Registrar, Laikipia nullifying the title deeds already issued to the Petitioner Respondent, illegally on the estate of the deceased

(c) an order restraining the District Land Registrar from issuing any new title deeds on the estate of the deceased to the Petitioner or any other person pending the outcome of the Petition,

(d) the costs of the application be provided for.

2. Though the application was served upon counsel for the Petitioner/Respondent, they neither filed a Replying Affidavit nor Grounds of Opposition, nor did they appear at the hearing. The Affidavit of Service sworn on 4th December 2013 and filed on 5th December 2013 shows service. In addition a Hearing Notice dated 17th June 2014 and served on 24th June 2014 upon counsel for the Petitioner, but again, counsel for the Petitioner never appeared, and the matter proceeded ex parte at 10.15 a.m. when only counsel for the Applicant appeared.

3. According to counsel for the Applicant/Objector the only issue for determination is whether a Petitioner is entitled to be issued with Title to estate property or lands while the Petition is pending confirmation.

4. Though Section 79 of the Law of Succession Act vests all the property of the deceased in the personal representatives, such personal representatives have no power of distribution until the Grant is confirmed under Section 71(1) of the Law of Succession Act. Such personal representative hold such property as trustee only pending confirmation of the Grant and distribution.

5. It is thus clear to me that if the Petitioner/Respondent has had transferred to himself/herself any of the

estate lands, the same can only be held in trust pending confirmation of the Grant. As the Petitioner/Respondent declined to respond thereto the Application here is therefore unopposed. I therefore allow the application in terms following -

1. *The District Land Registrar is hereby restrained from issuing any title to Regina Wairimu Gatore the Petitioner/Respondent herein pending the hearing and determination of the cause herein, and*
2. *a prohibition against any dealing with any part of the estate land pending the hearing and determination of the cause herein,*
3. *the costs herein shall be in the cause.*

6. Having granted the above orders, I wish to add that I have done so in the interests of justice. I wish to remind counsel that the Law of Succession Act is almost a complete code in itself. Applications to court are made under Section 47 of the Act, and rule 63 of the Probate and Administration Rules. The Civil Procedure Act (*Cap. 21, Laws of Kenya*) and the Civil Procedure Rules only have application to the extent so provided.

7. Save as above stated, the application is allowed in terms of the orders stated in paragraph 5 above.

8. There shall therefore orders in terms thereof.

Dated, signed and delivered at Nakuru this 31st day of October, 2014

M. J. ANYARA EMUKULE

JUDGE