



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NUMBER 1855 OF 2011

IN THE MATTER OF THE ESTATE OF JUDITH NJOKI LENGANA (DECEASED)

RULING

1. On the 29th of August 2011 Stephen Murathi Kambi and Agnes Miranui Kieya filed a petition for the grant of Letters of Administration for the estate of Judith Njoki Lengana who died on the 23rd of June 2011. They presented the said petition as Son and Mother of the deceased. A grant of Letters of Administration Intestate was issued to the 2 on the 30th of January 2012.
2. On the 6th of August 2012 Stephen Murathi Kambi applied to have the letters of Administration made on the 30th of January 2012 confirmed. The same was confirmed on the 22nd of October 2012. The estate of the deceased was to be shared as per the agreed mode of distribution.
3. On the 4th of January 2011 the firm of Kamata & Company filed a notice of appointment on behalf of the objector Robert Simon Wambugu. On the 23 of November 2012 the Objector filed a Summons for Revocation or annulment of the Grant issued to Stephen Murathi Kambi and Miranui Kieya made on the 30/1/2012. The objector claims that he purchased plot No. KJ30 Dandora Phase 11 Jua Kali and has developed the same into 12 units of 2 bedrooms and one bedroom valued at Kshs. 12. 5 million.
4. On the 23rd of April 2013 the Objector filed an application under Section 47 of the Law of Succession Act and Rule 73 of the probate and administration Rules. He seeks the following orders;
 - i. *That the Petitioners/ Administrators namely Stephen Murathi Kambi and Agnes Miranui Kieya be restrained by an order of injunction either by themselves, their employees, agents , servants , relatives or anybody else whatsoever from entering, trespassing, residing, collecting any rent from, or in any other way whatever dealing with all parcel of land known as Plot No. KJ30 Dandora Phase 11 Jua Kali and all structures or houses built thereon pending the hearing and final determination of the matter .*
 - ii. *That the officer Commanding Kinyago police Station do ensure that the orders are strictly complied with.*
 - iii. *That an order be issued declaring that all that parcel known as Plot No. KJ30 Dandora Phase 11Jua Kali was never owned by the late Judith Njoki Lengana and therefore does not form any part of the assets of the estate.*
5. The application is supported by one ground that Plot No. KJ30 Dandora Phase 11 Jua Kali rightfully and lawfully belongs to the Objector herein but since the death of the deceased the Petitioners and especially the 1st petitioner is trying to illegally force it to be part of the estate and in so doing are involving criminality and corruption and unless they are restrained from doing so

they may even pose danger to the life of the objector. The application is supported by the supporting affidavit of the objector dated the 23rd of April 2013 and a supplementary affidavit dated the 22nd of January 2013.

6. The Administrator was served with the application. Their advocate was served on the 6th of October 2014. Neither Counsel nor the Administrator attended court on the 22/10/14 when the objectors application was heard. Mt. Okemwa filed a Notice of Change of Advocates for the Objector on the 21/11/13.
7. The Objector's case from the 2 affidavits filed is that; he purchased Plot No. KJ30 Dandora Phase 11 Jua Kali from the original owner Wilfred Mwangi Mbogo at a purchase price of Kshs. 370,000/- and the deceased who was his girlfriend witnessed the agreement they executed. Thereafter he erected a building at the said plot. That the administrators have included the said plot as part of the assets of the deceased and hence the filing of this objection. That the Administrators are now collecting rent from the tenants who occupy the houses within the said plot, thus robbing him of his entitlement from his hard earned assets. He explained that after building the houses at the said plot he occupied one of the two bedrooms with the deceased Judith Njoki who was still his girlfriend while he let out the other rooms and that the deceased collected the monthly rents from the tenants. That since she was the one dealing with the tenants most of the times they could have mistaken her as the owner as they were staying together but she was just his girlfriend as he never married her under any known law or custom to enable her to be his wife. That he did not have the plot transferred to his name as he was busy building and did not have any problem with the previous owner since he had paid the whole purchase price and the said owner had transferred all the documents of transfer into his name including power of attorney and gave him ownership documents. He was to transfer the same into his name at his own convenience; that during lifetime of the deceased they lived as lovers and upon her death he experience a lot of problems with the family especially one Stephen Murathi Kambi who is one of the administrators who has assumed the role of being the landlord in respect of the said houses and has been collecting rent from the tenants which he converts into his own use without his consent; that efforts to stop him in doing so have been futile and that the said Stephen Kambi has poisoned the tenants from dealing with him; that Stephen Kambi has interfered with the City Council of Nairobi by filling a restriction with them in the matters relating to the subject plot and therefore cannot transfer the same into his name due to the restriction. That on the 4th of August 2011, the deceased's family changed the locks he was staying and forced him out and they took most of his documents especially the ones related to the subject plot. He reported the same to the police; that he has received threats warning him not to go to the said plot; that he came to learn of the succession cause on the 29th of August 2011.
8. I have considered what has been deponed which has not been challenged by the administrator. The applicant has exhibited the agreement he had with one Wilfred Mwangi Mbugua for the sale of plot No. KJ30 Dandora. The said agreement indicate he is the purchaser and the deceased was a witness; he has also exhibited the power of attorney signed by the seller to him together with a water bill showing that he is the owner of the said premises of the subject plot. The applicant has on the facts deponed and documents exhibited shown that he has a prima facie case with a probability of success. He avers that he is suffering loss as currently the tenants are not paying him rent even though the houses belong to him hence the need for injunction. The facts deponed have not been challenged by the administrators. It is the applicant's case that Stephen Kambi has made it difficult for him to collect the rent. In light of what has been deponed which has not been challenged I therefore grant the following orders;-
 - i. *That the Petitioners/ Administrators namely Stephen Murathi Kambi and Agnes Miranui Kieya are restrained by an order of injunction either by themselves, their employees, agents , servants , relatives or anybody else whatsoever from entering, trespassing, residing, collecting any rent from, or in any other way whatever dealing with all parcel of land known as Plot No. KJ30*

Danadora Phase 11 Jua Kali and all structures or houses built thereon pending the hearing and final determination of the matter .

ii. *That the officer Commanding Kinyago police Station do ensure that the orders are strictly complied with.*

9. I decline to grant prayer 3 as it is a mandatory order and shall be dealt with at the hearing of the Summons for Revocation. The objector shall endeavor to fix the Summons for hearing within 60 days from the date of this ruling. Costs shall be in the cause.

Orders accordingly.

Dated, signed and delivered this Day of **27th November 2014.**

R. E OUGO

JUDGE

In the Presence of:

.....For the Objector

.....For the Administrator/ Respondent

.....Court Clerk