



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

LAND CASE NO. 540 OF 2016

PENINA INYANJE KARUNGU

(As Administrator of the Estate of

JOHN NGIGE KARUNGU, Deceased).....PLAINTIFF

VERSUS

CHRIS MASIRA.....DEFENDANT

MARY WANJIRU KINYANJUI.....DEFENDANT

RULING

1. In the application dated 9/2/2022 the appellant seeks the following prayers:

1. THAT this Honourable Court be pleased to issue an order of stay of proceedings in this matter pending the hearing and determination of the 2nd defendant's application seeking for the removal of the plaintiff as an administratrix to the estate of John Ngige Karungu in Nairobi Succession Cause No 2621 Of 2013.

2. THAT the honourable court be pleased to grant any further orders it may deem fit in the circumstances;

3. That the costs of this application be in the cause.

2. From the instant application and the reply it is apparent that there is an application in the succession court for *inter alia* orders of removal of the respondent/plaintiff herein as administrator of the estate of the late John Ngige Karungu on the basis that the certificate of rectified grant that she holds was fraudulently procured. It is stated in the instant application that during the hearing of the instant suit the plaintiff admitted to having used her position to intermeddle with the deceased's estate and having carried out fraudulent transactions in order to disinherit the applicant and her children as well as concealing material facts from the succession court. The applicant states that the validity of the grant issued to the plaintiff is a major issue in the instant proceedings; that if the grant is revoked, the plaintiff will lack capacity to prosecute the instant suit and so a stay of proceedings in this suit is prudent for those reasons.

3. The respondent's response is that the application offends the provisions of **Order 19 rule 3** of the **Civil Procedure Rules 2010**; that plot number **229** was subdivided into two portions during her late husband's lifetime and that she has faithfully administered the deceased's estate. In this court's view, the rest of the details in her affidavit are only fit for consideration in the application before the succession court.

4. The plaintiff's case in the main suit is that she was issued with a grant of probate with written will annexed alongside her son who later passed on; that plot no **228** was co-owned by her late husband and her son; that the plaintiff's late husband in his will provided that the income from the school built on the land would be paid to the plaintiff; that instead, the 2nd defendant allegedly fraudulently illegally sold and transferred a portion of the land to the 1st defendant who trespassed on the land and destroyed the school and other structures thereon. The transfer is sought to be declared null and void. An injunction is also sought restraining the defendants from interfering with the suit land.

5. I have considered the instant application at length. The main point made by the applicant is that the plaintiff's status as administrator of the deceased's estate is under threat of revocation by the succession court at the applicant's instance. Whether that will happen or not can not be foretold.

6. The respondent avers in her replying affidavit that it is her belief that since her late husband had subdivided another plot, plot number **Shawa /Gicheha /Kangakinga 229** during his lifetime after making the will, the doctrine of ademption applied to that land, and that therefore the subdivisions fell under the deceased's intestate estate and legally devolved to her. She does not address the issue of plot number

Shawa /Gicheha /Kangakinga /228. Notably the will she attached to her replying affidavit states as follows regarding that plot:

“My share of the income from the Trinity Primary School being plot No LR No Block 4/228 Shawa /Gicheha /Kangakinga also situate in Nakuru District to be paid to my wife Mrs Penina Inyanje Karungu.”

7. I find nothing else stated regarding that plot in the will. However, from the green card in the record it is evident that the suit plot was in the year **2009** registered in the names of the respondent’s husband and the applicant’s husband without any apportionment of ownership being reflected on the land register. The land was subsequently registered in the names of the applicant and another person and later in the name of the applicant alone and title deed issued. The last two entries were made on **21/1/2016**.

8. In the instant application, the respondent does not also contest the allegation that her position as administrator is being challenged in the succession court.

9. The applicant cites the cases of **Frederick Kamau Kamande Vs Peter Maina Njoroge 2019 eKLR, Judith Nerima Ogombe & Another Vs Leonard Otuba Sanya 2021 eKLR** and **Roseline Chepkerich Vs Priscilla Jemutai Murei & 2 Others 2018 eKLR** and relies on **Section 13(7)** of the **Environment and Land Court Act** to support her plea for stay of proceedings.

10. The plaint in this matter describes the respondent as suing as the executrix of the estate of her late husband. I note that there are two categories of properties under the deceased’s estate: those provided for under the will and those not provided for. Only the distribution of the income from the suit land herein is addressed by the will. The person to whom the plot in issue in the instant suit would devolve upon the deceased’s demise is not stated; only the income. I note that in her revocation application attached to her supporting affidavit the applicant has not referred to the suit property, but has sought an order that the succession court do set aside the intestate assets of the deceased discovered after the confirmation of the certificate of grant to pave the way for them to be distributed equally among the beneficiaries.

11. I think that the question before this court is simply whether the applicant fraudulently transferred the suit property to the 1st defendant in the instant suit. The land having been registered in the names of both parties’ husbands and they being now deceased, the applicant and the respondent hold grants of letters of administration to those respective estates. The question is how to determine the interest of each estate in the suit land for the purpose of establishing whether the transfer by the applicant fraudulently disinherited the respondent.

12. In this court’s view this is a question of ownership which can not be determined by the succession court for want of jurisdiction, and which, if the stay of proceedings order is granted, will have to come back to this court at the end of the succession proceedings for determination.

13. However, I agree with the decisions cited by the applicant. I find that the probability is that that the perchance the status of administrator that enabled the respondent to bring this suit is revoked as sought in the succession court, this matter may not proceed further. It is therefore prudent to stay the proceedings herein pending the hearing and determination of the revocation application.

14. Consequently, I find that the application dated **9/2/2022** has merit and it is hereby granted in terms of **prayers nos 1 and 3** thereof.

15. This matter will be mentioned on **26th May 2022** to establish the status of the revocation application in the succession court.

DATED, SIGNED AND ISSUED AT NAKURU VIA ELECTRONIC MAIL ON THIS 27TH DAY OF APRIL, 2022.

MWANGI NJOROGE

JUDGE, ELC, NAKURU