



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL DIVISION**

**CIVIL SUIT NO. 195 OF 2013**

1. JAMES RAYMOND WAWERU
2. SIMON NDIRANGU WAWERU

(Suing as beneficiaries and administrators

of the estate of **GRACE WANJIRU NDIRANGU**).....**PLAINTIFFS**

**VERSUS**

1. JANE WANGARI NDIRANGU
2. LYDIA WACHUKA NDIRANGU .....**DEFENDANTS**

**RULING**

1. The Plaintiffs are children of the late **GRACE WANJIRU NDIRANGU** (hereinafter called the **Deceased**), apparently a single mother. They have a minor sister called J N. The Defendants were sisters of the Deceased.
2. The Deceased died intestate on 13<sup>th</sup> June 2006. At the time of her death her three children were all minors.
3. The Deceased owned various properties at the time of her death, including **House No. 413, Komarock Estate (Sector 4D), Nairobi** (hereinafter called the **suit property**). The suit property was the family home of the Deceased and her children at the time of her death.
4. The Plaintiffs' case against their aunts (the Defendants) is briefly as follows –
  - (i) That upon their mother's death the 1<sup>st</sup> Defendant went to live with the Plaintiffs and their sister in their house under pretense of taking care of them as they were minors. The 1<sup>st</sup> Defendant came along with her daughter.
  - (ii) In due course the Defendants applied for and were granted **letters of administration to the estate of the Deceased**, and they thereby took full control of the entire estate of the Deceased, including the suit property.
  - (iii) That subsequently the 1<sup>st</sup> Defendant so mistreated the Plaintiffs and their sister that it became intolerable for them to continue living with the 1<sup>st</sup> Defendant in their own home. They were thereby forced to move out and seek refuge

elsewhere.

(iv) That the 1<sup>st</sup> Defendant and her daughter continued to live in the suit property.

(v) That after they attained majority the Plaintiffs applied for revocation of the grant issued to the Defendants with respect to their mother's estate. The same was revoked and they were appointed the administrators of the estate of their mother.

(vii) That in the course of time the Defendants converted the assets of the estate of the Deceased to their own use, including income derived from certain other properties of the estate, all to the exclusion and detriment of the Plaintiffs and their sister who are the rightful beneficiaries of their mother's estate.

5. The Plaintiffs seek the following main reliefs in their plaint dated 27<sup>th</sup> May 2013 –

**“(a) A mandatory order requiring the Defendants, and severally by themselves, their agents, children, employees and/or agents, to vacate and hand over unconditionally to the Plaintiffs vacant possession of the premises known as House NO. 413 (Sector 4D), Komarock Estate together with all furniture and immovable assets that the Defendants took over in 2006, and such handover to be within a period of seven (7) days or such other reasonable period that the...Court may deem just to grant.**

**(b) A perpetual injunction restraining the Defendants by themselves, their agents, children and/or servants from trespassing, interfering, occupying, renting, dealing and/or interfering in whatsoever manner with the Plaintiff's quiet possession and occupation of the suit premises, House No. 413 (Section 3A) Komarock Estate, and/or dealing, retaining any other assets or documents belonging to the late GRACE WANJIRU NDIRANGU.**

**(c) An order requiring the Defendants jointly and severally to give a true and accurate account of their administration of the Deceased's estate from 2006 to date and in particular the whereabouts and dealings of the assets disclosed in form No. P&A dated 13.12.2006 lodged by the Defendants in Nairobi High Court Succession Cause No. 1329/2007 (in the matter of the Estate of GRACE WANJIRU NDIRANGU), in particular the following Deceased's assets namely: -**

**i. M/V Registration No. KAT 506V.**

**ii. Rent collected from extension unit to House No. 413 (Section 3A) Komarock Estate, stalls adjacent to the said house (Komarock Estate market) monies received from OCTAGON PENSION SERVICES LTD/Standard Chartered Bank Ltd from June 2006 up to August 2012 (both months inclusive) and rent received from plots/stall in UMOJA III Housing Scheme.**

**iii. Whereabouts and surrender of the title to House NO. 413 (Sector 3A) Komarock Estate, Logbook in respect of motor vehicle KAT 506V and titles/shares certificates, Komarock Estate marked Plot Nos 335 and 360, Umoja III, Housing settlement scheme.**

**(d) Damages for the tort of conversion and/or mesne profits**

**(e) That in the alternative and/or in default of the Defendants compliance with prayer (a) herein above, the plaintiffs be at liberty to forcefully evict the Defendants jointly and severally from the suit premises House NO. 413 (Sector 4D) Komarock Estate using a licensed auctioneer and that the OCS Kayole**

**Police Station do provide security and/or supervise the eviction process for the purposes of maintaining law and order.”**

6. The Defendants filed joint **defence dated 24<sup>th</sup> June 2013**. They generally denied the Plaintiffs’ averments, though they did not put forward any claim of interest in their sister’s estate. The 1<sup>st</sup> Defendant however pleaded that she was residing in the suit premises with the Deceased long before she died. The Defendants denied ever taking over the estate of their sister to the detriment of her children. They also denied ever harassing, manipulating or intimidating the Plaintiffs, or misusing the Deceased’s estate in any way. Finally they pleaded that the Plaintiffs’ suit discloses no reasonable cause of action and that the same is scandalous, frivolous, vexatious and an abuse of the process of the court. They also denied the jurisdiction of this court.

7. Together with the plaint the Plaintiffs filed **notice of motion dated 27<sup>th</sup> May 2013**. It is expressed to be brought under **Order 40, Rules 1, 2, 4 and 11** of the **Civil Procedure Rules, 2010** (the **Rules**). **Section 3A** of the **Civil Procedure Act, Cap 21** is also invoked. The main orders sought in this application are –

**“(i) That a mandatory order do issue requiring the Defendants by themselves, their agents, employees, children and/or servants to unconditionally vacate and hand over vacant possession of House No. 413 Sector (3), Komarock Estate to the Plaintiffs within seven (7) days of the court order or within such other reasonable period as the court may deem just.**

**(ii) That upon the Defendants granting such vacant possession to the Plaintiffs as per prayer (2) hereinabove, the Defendants by themselves, their agents, servants, children, and/or employees be restrained from trespassing, interfering, occupying, leasing, dealing and/or interfering in whatsoever manner with the Plaintiffs’ quiet possession, ...or interfering in whatsoever manner with the Plaintiffs’ quiet possession and/or occupation of House No. 413 (Sector 3A), Komarock Estate pending the hearing and final determination of the instant suit.**

**(iii) That in default of the Defendants compliance with prayer (i) hereinabove the Plaintiffs be at liberty to forcefully evict the Defendants jointly and severally from the suit premises using a licensed auctioneer with the assistance of the OCS, Kayole Police Station for maintenance of peace and order.”**

8. The Plaintiffs’ case in this application is the same as put forward in the plaint. In addition they have pleaded that they have nowhere to live and that they need back their home so that they may lead a decent life. They also point out that they are now the administrators of their mother’s estate. They plead that justice demands that the order sought be granted.

9. The application is supported by an affidavit sworn by the 2<sup>nd</sup> Plaintiff in which he gives the factual background to both the suit and the application.

Various documents are annexed to the affidavit.

10. The Defendants have opposed the application. They have filed separate replying affidavits sworn by them. Both replying affidavits were filed on 24<sup>th</sup> June 2013. In her replying affidavit the 1<sup>st</sup> Defendant maintains that she and the 2<sup>nd</sup> Defendant are still the administrators of the estate of the Deceased because, as she alleges, they have never been served with any application for revocation of the grant made to them. She has also repeated her claim that she lived with the Deceased in the suit property before her death. She has pleaded that it would cause her and her daughter great hardship if the order sought is granted.

11. The 1<sup>st</sup> Defendant has also deponed that at one point the Plaintiffs agreed to pay her KShs 300,000/00 to “cater for the expenses that she incurred in managing the estate of the Deceased” but that they later changed their mind. She also claimed that she had spent over KShs 1.12 million to furnish the house comprised in the suit property. She has annexed some receipts. There are other documents exhibited in her replying affidavit.

12. On her part the 2<sup>nd</sup> Defendant has deponed that she does not and has never lived in the suit property, and that therefore she should not have been sued by her nephews. She has not denied that at one point she was a co-administrator of the Deceased’s estate.

13. I heard this application on 26<sup>th</sup> June 2013. I have considered the submissions of the learned counsels appearing, including the cases cited.

14. Whatever the circumstances that led to the fallout between the Plaintiffs and the Defendants, this is nevertheless an unfortunate case. The Plaintiffs were minors when their mother died. Whether or not the 1<sup>st</sup> Defendant was living in the Deceased’s house at the time of her death, what is clear is that the Plaintiffs and their sister fell under her direct care. Both Defendants then applied for and obtained letters of administration to the Deceased’s estate, and the same came into their full control.

15. For whatever reason, and I will not here apportion blame, the Plaintiffs and their sister could no longer live with the 1<sup>st</sup> Defendant, and at their tender age they moved out of their own home, voluntarily or otherwise. It appears that the 1<sup>st</sup> Defendant has been happy to keep living in the Plaintiffs’ home with her daughter. From her pleadings it is clear that she has no plans to move out so that the Plaintiffs and their sister may repossess and occupy their own home.

16. The 1<sup>st</sup> Defendant has not put forward any claim to her sister’s estate. The Plaintiffs and their sister can no longer live with her. Should she not by now have made arrangements to move out of her sister’s house so that her children can live in their own home as they wish without her? Is that not what she should have done in law and in morality? Why does she continue to occupy a house that is clearly the Plaintiffs’ home, yet they cannot live with her? She has not claimed that she was the Deceased’s dependent or that she is entitled in law to continue living in the house.

17. A temporary mandatory injunction such as is sought will normally not be granted in the absence of special circumstances. Even when there are special circumstances, it will be granted only in a clear case where the court thinks that the matter ought to be decided at once, or where the injunction is to be directed at a simple and summary act which could be easily remedied, or where the defendant has attempted to steal a march upon the plaintiff. In any event, the court must feel a high degree of assurance that at the trial of the action it shall be clear that the mandatory injunction had been rightly granted. See the English case of ***Locabial International Finance Ltd Vs Agroport and Others [1986] 1 ALL ER 901***. These principles have been approved and adopted by our courts.

18. In the present case, I have already pointed out that the Defendants do not have any claim to the Deceased’s estate. The suit property now occupied by the 1<sup>st</sup> Defendant is the Plaintiffs’ and their minor sister’s home where they were left by their mother when she died. The 1<sup>st</sup> Defendant came to live in the property, or continued to live in the property after the Deceased’s death (whatever the case might be) principally to take care of the Plaintiffs and their sister as they were all then minors. Either the loving care that they expected from the 1<sup>st</sup> Defendant was not forthcoming or they no longer wanted it (it does not matter which). Whatever the case they could no longer live together with their aunt and they moved out. After they attained majority the succession court permitted them to take control of their mother’s estate. They now want back their home, a home to which the 1<sup>st</sup> Defendant does not have a claim.

19. I am satisfied that in the present case there are special circumstances. I am also satisfied that this is a clear case where the interlocutory mandatory injunction sought ought to be granted.

20. I will therefore allow the application as prayed save that **the 1<sup>st</sup> Defendant shall vacate the suit property on or before 31<sup>st</sup> July 2013.** In default she shall be forcefully evicted as prayed. Those shall be the orders of the court.

21. The Plaintiffs shall have the costs of the application as against the 1<sup>st</sup> Defendant. There shall be no order as to costs as regards the 2<sup>nd</sup> Defendant.

**DATED AND SIGNED AT NAIROBI THIS 11<sup>TH</sup> DAY OF JULY 2013**

**H. P. G. WAWERU**

**JUDGE**

**DELIVERED AT NAIROBI THIS 12<sup>TH</sup> DAY OF JULY 2013**