



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
SUCCESSION CAUSE NO.1101 OF 2011
IN THE MATTER OF THE ESTATE OF
DUNCAN MUREITHI KIMONDO – DECEASED

AND

SUSAN WANJIRU MURIITHI.....1ST OBJECTOR/APPLICANT

VERSUS

LEAH NGIMA MURIITHI.....PETITIONER

FAITH WANJIRU KIMONDO.....2ND OBJECTOR/RESPONDENT

RULING

The subject matter of this ruling is the summons general dated 1st November 2012, in which Susan Wanjiru Muriithi, the 1st protestor herein, sought for the following orders:-

1. THAT this application be certified as urgent and the same be heard ex-parte in the first instance.
2. THAT the Honourable Court be pleased to stay the order dated 17th August 2012.
3. THAT the Honourable Court does review the said orders and set aside the said order.
4. THAT cost of this application be provided for:
 - a. THAT the orders will put some beneficiary into hardship.
 - b. THAT some new evidence has been availed.
 - c. THAT the said order gives room for some tenants to default paying rent.

The 1st Protester swore an affidavit she filed in support of the summons. When served, Leah Ngima Muriithi, the Petitioner herein and Faith Wanjiru Kimondo, the 2nd Protestor, each filed a replying affidavit to oppose the summons.

When the summons came up for interpartes hearing, Mr. Gori, learned advocate for the 1st Protestor, beseeched this court to grant the orders sought claiming the Petitioner and the 2nd Protester have been

very uncooperative. The Petitioner and the 1st Protester simply relied on their replying affidavits. I have carefully considered the material placed before me and the oral submissions tendered before this court. It is the submission of the 1st Protester that if this court's orders made on 17th August 2012 are complied with, it will cause hardship to the other beneficiaries. The 1st Protester further pointed out that some evidence have emerged which may necessitate the setting aside of the aforesaid orders. It is also argued that if the orders are not set aside, some tenants will default in remitting rent to the estate. It is further argued that the account where the rent is deposited is micro-managed by all the family members and no money is withdrawn without the consent of the other family members. The 1st Protester narrated how part of the amount collected was used. It is said some of the money was used to offset electricity bills, carry out repairs, pay land rates, settle medical bills, dowry, school fees and court fees for the filing of this cause. In her reply, Leah Ngima Muriithi, pointed out that there are no good grounds to enable this court grant the orders sought. She argued that the 1st Protestor has never involved her in the running of the estate. She also pointed out the account where the rental income is posted is a personal account which does not reflect that the money came from the estate. She denied knowledge of the expenses settled by use of the Estate's rental income. Faith Wanjiru Kimondo, made averments similar to those of Leah Nginah Muriithi.

I have carefully considered the oral submissions. There is no dispute that on 17th August 2012, this court interalia restrained Susan Wanjiru, her agents, servants, brothers, sisters and any other people claiming through from collecting rent or in any manner intermeddling with the deceased estate and in particular of L.R. No. Thegenge/Karia/1275 and a plot at Mumbi Estate. She was also ordered to make accounts of the rental incomes she received from the aforesaid assets. A further order was made for the opening of a new account where the rental income can be deposited. This court has been urged to review and set aside the aforesaid orders because it will cause hardship to other beneficiaries. It is also said that there is new evidence which should compel this court to interfere with its orders.

The principles to be considered in an application for review are well settled. First, must show that there is a new set of evidence which was not available after an exercise of due diligence at the time of making the application. Secondly, that it must be shown that there is an apparent error on the face of record. In my view, the application does not meet the above requirements. I have also been asked to stay the exercise of the orders pending the hearing and conclusion of the cause. Before granting this order, one must prove to the court that he or she will suffer substantial loss. The 1st Protestor has stated that the estate will suffer substantial loss in that tenants will take advantage of the anticipated lacuna to avoid paying rent or in the alternative seek for separate premises. In my view that submission cannot stand because there is no evidence that tenants will avoid paying rent. Even if that was true, the administrators, of the estate will take the necessary steps against such tenants to preserve the estate. In the end, the order that commends itself is the dismissal of the Summons General dated 1st November 2012. Consequently I dismiss the application and direct that each party meets his or her own costs.

Dated, signed and delivered this 23rd day of August, 2013

J. K. SERGON

JUDGE

In open court in the presence of Kingori holding brief for Gori for Applicant

Respondent in person