



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

MILIMANI LAW COURTS

Civil Case 612 of 2011

IN THE MATTER OF: The Estate of **DR. LIITHO WANGONDU NDEGWA** also known as **DR. RIITHO WANGONDU NDEGWA** (Deceased).

AND

IN THE MATTER OF: An application by **REBECCA MUTHONI KIAMA, JACKSON WANGONDO RITHO** and **BENARD NDEGWA RITHO**, under section 47, 82 and 83(b) of the Law of Succession Act Chapter 160 of the laws of Kenya and Rules 11 and 73 of the Probate and Administration Rules.

REBECCA MUTHONI KIAMA.....1ST PLAINTIFF/APPLICANT

JACKSON WANGONDU RITHO.....2ND PLAINTIFF/APPLICANT

BERNARD NDEGWA RITHO.....3RD PLAINTIFF/APPLICANT

-VERSUS-

MARY WANJIRU NDEGWA.....1ST DEFENDANT/RESPONDENT

EJIDIO NJERU GABRIEL.....2ND DEFENDANT/RESPONDENT

RULING

The plaintiff applicant has filed a Notice of Motion dated 4th November 2011 brought under Section 3, 3A and 63(e) of the Civil Procedure Act, Orders 37, 40 Rule 1(a) and Order 51 Rule 1 of the Civil Procedure (Revised rules) 2010 CAP 21 Law of Kenya and all other enabling provisions of the law and powers of the court.

The applicant is seeking the following orders;-

1) Pending the inter parties hearing of this application an order of injunction do issue restraining the Defendants/Respondent by themselves, their servants or agents in any matter whatsoever from continuing

to interfere with or intermeddle in the estate of the deceased and in particular from transferring, alienating, leasing, trespassing onto or in any other manner whatsoever dealing with in the parcels of land known as Plot no. 696 (Title No. 684) situated along 2nd North, Geoffrey Riruti Road Kahawa Sukari Estate, Nairobi and Parcel No. NRB/BLOCK/126/466 in Ng'undu Farm or acting in any manner in respect thereto which is prejudicial to the rights and interest of the Applicant as the Legal representatives and beneficiaries of the estate of the deceased DR. LIITHO WANGONDU NDEGWA also known as DR. RIITHO WANGONDU NDEGWA.

- 2) Pending inter parties hearing of this application the 1st Respondent be restrained from holding on to the Death Certificate and other documents relating to the deceased or his estate and she be ordered to surrender to the Plaintiff/Applicants the original Death Certificate issued by the South African Authorities in respect of the deceased to enable the Plaintiff/Applicants administer the estate of the deceased.
- 3) The 1st Defendant/Respondent be restrained forthwith from representing herself as the widow of the deceased and/or beneficiary of the estate of the deceased or from pursuing, claiming or dealing with any of the assets comprising the estate of the deceased wheresoever the same may be located.
- 4) Such other or further orders as this Honourable Court may deem fit and just to grant.

The application is premised on the supporting affidavit of Rebach Muthoni Kiama, Jackson Wangondu Ritho, Benard Ndegwa Ritho and the affidavit in support of Urgency Sworn by Jackson Wangondu Ritho, the supplementary affidavit of Alexander Ritho Wangondu, DR. Samuel Karimi Gatangi, Muthoni Kingethu Muguta, Martha Wangui Mbugua, Pastor Ayub Nkoroi, Constance Wanjiru Maina, Isabella Wangondu and Gladys Wangari.

The grounds stated on the face of application are:-

- 1) The Plaintiff/Applicants are the administrators of the estate of the deceased having been granted letters of Administration ad *Colligenda Bona* on 4th July 2011.
- 2) The Plaintiff/Applicants were granted the said letters of Administration in their capacity as widow and sons respectively.
- 3) The grant of letters of Administration empowers the administrators to collect, get-in and receive the estate and do such other acts as may be necessary for the proper preservation of the estate but the Defendant/Respondents are interfering with the Plaintiff/Applicants rights to do so.
- 4) The Defendant/Respondent have refused to hand over the Plaintiff/Applicant and are continuing to trespass on the two properties known as Plot No. 696 (Title No. 684) situated along 2nd North, Geoffrey Riruti Road Kahawa Sukari Eastate, Nairobi, and Parcel No. NRB/BLOCK/126/466 in Ng'undu Farm which form part of the estate of the deceased.
- 5) The 1st Defendant/Respondent is unlawfully holding onto the deceased's original Death Certificate issued by the South African Authorities where the deceased died which the plaintiff/Applicants need it to administer the estate.
- 6) The 1st Defendant/Respondent is fraudulently using the Death Certificate to impost herself as the widow and beneficiary of the estate of the deceased both in Kenya and in South Africa where the deceased's estate also extends.

On the 18th November 2011, the plaintiff/applicant filed a notice of withdrawal of the suit under order 25 of the Civil Procedure Rules withdrawing their claim in the suit against the 2nd defendant/respondent Ejidio Njeru Gabriel.

This suit has been brought by way of an originating summons and was filed in Court on the 7/11/11.

The applicants in this case state that the 1st applicant Rebecca Muthoni Kiama is the widow of the deceased DR. Liitho Wangondu Ndegwa also known as Dr. Riitho Wangondu Ndegwa who died in South Africa on the 20th February 2011; that the 2nd and 3rd applicants Jackson Wangondu Riitho and Bernard Ndegwa Ritho are the sons of the 1st applicant and the deceased; That the deceased in his life time worked in Kenya and later moved to be a lecturer in South Africa where he died; that upon his death the 1st respondent Mary Wanjiru Ndegwa who is the wife of the deceased younger brother rushed to South Africa together with the son Morris Wangondu Ndegwa and reported the death to relevant authorities in the South Africa and proceed to obtain a death certificate and hastily arranged to bury the deceased in South Africa before the rest of the family could arrange to attend the funeral.

That the deceased had before his death purchased 2 properties in Nairobi namely plot No 699 (Title No 684) situated along 2nd North, Geoffrey Riruti Road Kahawa Sukari Estate, Nairobi and parcel No. NRB/Block/126/466 in Ng'undu Farm (copy of allotment certificate for plot no 696 (title No 684) annexed at page 20). That the deceased developed the plot at Kahawa Sukari by putting up a residential house; that while working in South Africa the deceased kept in touch with the family and had entrusted his brother Justus Ndegwa Wangondu who pre-deceased him having died on 20th January 2005 to handle some of his properties in Kenya.

That after the deceased death the 1st Respondent gave false information to the South Africa Authorities that the deceased was single and was not married, that the deceased was a 'parent' to the said Morris Wangondu Ndegwa yet prior to his death the deceased invited his deceased brother's son to study in South Africa. That the 1st defendant apart from presenting herself to the South Africa Authorities as the widow of the deceased, has also represented herself as such to various offices and authorities in Kenya with a view to fraudulently benefit as the beneficiary of the estate of the deceased as seen in the letter dated 6/4/11 from the Chief Kamulu location (page 22) instead she is represented as the sole beneficiary of the deceased estate.

That after the deceased death the applicants applied for grant of letters of administration and they were granted a limited grant of letters of Administration and *Colligenda Bona* to collect, get in and receive the estate of the deceased and to do such acts as may be necessary for the presentation of the estate but the 1st defendant has been interfering with and tampering their rights to administer the said estate. At paragraph 22 of the supporting affidavit the applicant states that they have instructed their lawyer to do. That after they did so their lawyer wrote to the directors of Kahawa Sukari Estate in respect of plot no. 696 (title no 684) and the Directors of Ngundu Farm in respect of NRB/Block/126/416 at Ngundu farm but they have refused to comply and became hostile. That armed with a letter dated 26th August 2011 to the O.C.S Kahawa Sukari Police post and the Chief Kahawa Sukari location they attempted to get them to move out but the persons refused to yield. That having been unable to get assistance of the O.C.S they moved to Court.

There are also supplementary affidavits filed sworn by Alexander Riitho Wangondu, Dr. Samuel Karimi Gatangi, Mutheri Kingethu Muguta, Martha Wangui Mbugua, pastor Ayub Nkoroi, Constance Wanjiru Maina, Isabella Wangui Wangondu and Gladys Wangari Mwangi all dated 4/11/11. In brief they state that the 1st applicants is the widow of the deceased and the 2nd and 3rd applicant their sons. That the 1st Respondent is not the widow of the deceased but the wife of the late Justus Ndegwa Wangondu.

The 1st Respondent though served did not oppose the application.

I have carefully considered all that has been filed in his matter and I find as follows; it's apparent that the 1st respondent has interfered with the estate of the deceased for what has been stated by the applicants. She is said to have presented herself as the widow of the deceased and has also sought to have the transfer of the deceased properties. This is evident from the letter written by the Chief Kamulu location (see Page 22) the two properties the subject of this application are mentioned as the deceased properties at Ngundu and Kahawa Sukaru.

In granting an injunction and as guided by the principles stated in the case of Gellia .vs. Cassman Brown E.A 1973 , the applicant must show that they have a prima facie case with a probability of success. That the applicants have shown in their affidavits and the annexures attached that the 1st applicant is and has been known as the deceased wife by all those who filed the supplementary affidavit. The applicant has also shown that they have obtained a grant of letter of administration and *colligenda Bona*, to collect and receive the estate of the deceased and to do such acts as may be necessary for the preservation of the estate.

The 1st respondent from the affidavits was a wife to the late Justus Ndegwa Wangondu. She doesn't have the grant of letters of administration and *Colligenda Bona*. It is the applicants who have the said grant of letters of administration and *Colligenda Bona*. I find that based on what is before me the applicants have established a formal facie case. It is evident that the properties mentioned are in danger of being alienated by the 1st respondent. In order to preserve the estate of the deceased I grant the orders sought as follows.

1) That pending the hearing and final determination of the originating summons filed herein an order of injunction shall issue restraining the 1st defendant by herself, her servants or agents in any manner whatsoever from interfering with or intermeddling in the estate of the deceased and in particular from transferring, alienating, leasing, trespassing onto or in any other manner whatsoever dealing with parcels of land known as plot no 696 (title no 684) situated along 2nd North Geoffrey Rirutu road Kahawa Sukari Eastate, Nairobi and Parcel NRB/Block/126/446 in Ngundu farm or acting in any manner in respect hereto which is prejudicial o the rights and interest of the applicant as the legal representative and beneficiary of the estate of the deceased DR. Liitho Wangondu Ndegwa also known as Dr. Riitho Wangondu Ndegwa.

2) That pending the hearing and final determination of the Originating Summon filed herein the 1st Defendant/Respondent shall deposit the original death certificate of the deceased Dr. Liitho Wangondu Ndegwa also known as Dr. Riitho Wangondu Ndegwa issued by the South Africa Authorities in respect of the deceased in court.

The 1st respondent has not challenged the applicant's statements that she is not the widow of the deceased. In the absence of any evidence in refusal I grant prayer no 7 as prayed as follows;-

The 1st Defendant/Respondent be restrained forthwith from representing herself as the widow of the deceased and/or beneficiary of the estate of the deceased or from pursuing, claiming or dealing with any of the assets comprising the estate of the deceased wheresoever the same may be located.

The 1st respondent shall pay costs of the application.

Signed

Dated

Dated, Signed and delivered at Nairobi this 26th day of January 2012.

R. Ougo
JUDGE