

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NO. 426 OF 2006

IN THE MATTER OF THE ESTATE OF THE LATE AMOS NJENGA GIKONYO

CHARLES NGANGA NJENGA.....APPLICANT/OBJECTOR

VERSUS

LUCY WANGARI NJENGA.....RESPONDENT/PETITIONER

RULING

The deceased in this case Amos Njenga Gikonyo died intestate and was survived by a widow Lucy Wangari Njenga, the petitioner and several children, including the objector, Charles Nganga Njenga.

Although the objection together with answer to petition and petition by way of cross-petition was filed on 12th October 2006, the grant was somehow confirmed on 22nd October 2006 while the objection is still pending determination. Also pending is summons for revocation of the grant and for restraining orders filed on 21st February 2007 again brought by the said Charles Nganga Njenga.

The third application by him and others to which this ruling relates is dated 7th March 2011 and seeks that the petitioner be restrained from interfering or disposing of plot No. LIMURU/NGECHA/T.234 (the suit plot) and that one son of the deceased, Peter Gikonyo, who is also deceased, be substituted by his widow, Susan Waiter Gichohi. The application is supported by three affidavits sworn by the applicants, Charles Nganga Njenga, the said Susan Waithera Gichohi and another son of the deceased, John Mburu Njenga. It is the dependents' contention that Peter Gikonyo died on 21st December 2010 after this petition was filed; that he was survived by his widow Susan Waithera Gichohi and two children aged 30 and 28 years respectively; that the late Peter Gikonyo Njenga and his family lived on the suit plot where he had constructed a permanent four roomed house and sunk a borehole.

On the 1st March 2011, strangers posing as buyers came to the suit plot claiming they had been sent by the petitioner who intended to sell the suit plot to them, even before the grant is confirmed. It is also contended that the petitioner has stopped John Mburu Njenga from using plot No. NJORO/NGATA BLOCK 2/345. There was no reply to all the foregoing allegations. The petitioner also did not attend at the hearing of this application despite service with a hearing notice.

Whereas it is specifically sought that the petitioner be restrained from interfering with the suit plot (LIMURU/NGECHA/T.234), the affidavit of Charles Nganga Njenga and John Mburu Njenga has not stated what wastage is being committed to any other assets by the petitioner. According to Charles Nganga, the petitioner has been receiving Kshs.90,000 per year under a contract with Safaricom Limited which she does not account for. There is no evidence of the existence or nature of that contract. John Mburu Njenga on the other hand is unhappy that the petitioner has restrained him from using NJORO/NGATA BLOCK 2/345. There is no prayer in the application to restrain the petitioner with regard to this property.

Secondly there is no claim that the petitioner is in anyway wasting it or intending to sell it. Regarding the suit plot, it is not in doubt that the late Peter Gikonyo Njenga was a dependant of the deceased, being his son; that indeed his name was included in this cause as such; that he died in 2010 and was survived by a widow and two children. The widow has averred without being contradicted that the late Peter Gikonyo Njenga and his family has been in occupation of the suit plot which is registered in the name of the

deceased; that the petitioner intends to dispose of it even before the grant is confirmed. I am persuaded in the absence of any evidence in rebuttal that the applicant is entitled to the relief sought herein.

For that reason it is ordered that the petitioner shall be and is hereby restrained from interfering with and/or disposing of plot No. LIMURU/NGECHA/T.234 pending confirmation of the grant. The applicant is on the other hand directed to prosecute the pending applications so that the petitioner can move the court to confirm the grant which is over-due.

I award no costs.

Dated, Signed and Delivered at Nakuru this 28th day of February, 2012.

**W. OUKO
JUDGE**