



REPUBLIC OF KENYA
IN THE HIGH COURT
AT NAIROBI
MILIMANI LAW COURTS
Civil Suit 638 of 2011

WAMBUI HUNYU AND
VERONICA MUCHERA HUNYU
legal administrators
Estate of the late
STEPHEN HUNYU NJUGUNA – (Deceased)
PLAINTIFF

JANE
Suing as
of the

-VERSUS-

KABUITO CONSTRUCTION COMPANY LTDDEFENDANT

RULING

The Plaintiffs filed an application dated 6th September 2011, wherein they are seeking orders for a temporary injunction restraining the Defendant herein jointly and severally with his agents, servants, employees and/or any other person whatsoever from interfering with all that L.R. Number 10874/10, Karibaribi, Thika District (hereinafter referred to as the suit property) pending the hearing and determination of this suit, and that the officer commanding Kasarani Police Station do enforce compliance of the order.

The main grounds for the application are that the Plaintiffs are the legal administrators of the estate of the late Lucia Wambui Hunyu, who is one of the registered owners of the suit property, and that Defendant has encroached on the said property and especially the portion allocated to and occupied by the Plaintiffs and other family members, and has commenced extensive excavation thereon.

I have perused the pleadings and submissions filed in this application and suit, and I am of the opinion that I must first decide the preliminary issue of whether the Plaintiffs have *locus standi* to bring this suit and application, as the outcome will determine whether this Court will proceed with a determination of the application on its merits. This issue of *locus standi* has also been raised as a preliminary objection by the Defendant. The Plaintiffs have sued the Defendant in their capacity as legal administrators of the Estate of the late Stephen Hunyu Njuguna, yet in the supporting affidavit sworn by Jane Wambui Hunyu on 6th September 2011, she states that the Plaintiffs are the legal administrators of the estate of the late Lucia Wambui Hunyu, who was their mother and one of the registered owners of the suit property.

A copy of a certificate of title of the suit property is annexed to the said affidavit as evidence, and indeed shows that the suit property is registered in the names of Kamau Njoroge, Wambui Gathimbo and Lucia Wambui Hunyu as leasees of 13%, 17% and 70% shares respectively. The Deponent has also attached a copy of the Letters of Administration she relies on, which were issued in Succession Cause No 300 of 1982 on 28th April 2004 with respect to the estate of Steven Hunyu Njuguna, wherein Jane Wambui Hunyu and Veronica Muchera Hunyu who are the Plaintiffs herein are appointed some of the administrators of the estate.

The same Deponent swore a supplementary affidavit on 1st December 2011 wherein she averred that the suit property is the property referred to as “item i – 15.8 acres at Mugwatha Farm” in a supporting affidavit filed in Succession Cause No 300 of 1982 which she has annexed, which property the Plaintiffs were to administer in the estate of Steven Hunyu Njuguna who is their deceased father. Further, that the said property was registered in the names of Lucy Wambui as a trustee for the beneficiaries of their father’s estate. The Plaintiffs in their written submissions dated 15th December 2011 have argued that they have *locus standi* as they were appointed as administrators of the entire estate of Hunyu Njuguna, including the suit property which was owned by Hunyu Njuguna but registered in the name of Lucia Wambui Njuguna.

It is argued by the Defendant in the Replying and Supplementary Affidavits sworn by the Defendant’s Director Amip Patel on 18th October 2011 and 27th January 2011 respectively, and those sworn on the same dates by Martin Thiongo, a son of the deceased Lucia Wambui Hunyu, as well as in the Defendant’s written submissions dated 27th January 2011, that the Plaintiff’s have no *locus standi* to bring this application as the land is registered in the name Lucia Wambui Hunyu, and they have no letters of Administration issued with respect to the estate of Lucia Wambui Hunyu. The Defendant had entered into a tenancy agreement with the said Martin Thiongo wherein the Defendant was granted a licence to excavate murram from a portion of the suit property. It is therefore also in issue whether the said Martin Thiongo has any locus to deal with the suit property, but the Plaintiffs have only sued the Defendant in this suit.

On the issue of the Plaintiffs’ *locus standi*, this court can only grant orders affecting land to a party who has legal or equitable interest in the said land. Legal interests in land are normally evidenced by title, and the title over the suit property produced in evidence is registered in the name Lucia Wambui Hunyu, and was issued on 1st September 1986 and registered on the same date. The suit property therefore could not have been among the list of assets of the late Hunyu Njuguna on 28th April 2004 when letters of administration were issued with respect to his estate. As the said property is registered in the name the Deceased Lucia Wambui Hunyu, the Plaintiffs need to bring proof that they are indeed the legal representatives of the deceased as is required by Order 24 of the Civil Procedure Rules, before they can proceed with the suit herein or any application with respect the suit property.

In addition, it was held by the Court of Appeal in **Troustik Union International & Another vs Mrs Alice Mbeyu & Another** Nairobi Civil Appeal Number 145 of 1990, that a court cannot make a

decision concerning a deceased's estate, where no letters of administration have been issued to an administrator of the said deceased person, and that nobody has capacity to bring a suit concerning a deceased's estate without first applying for letters of administration.

The Plaintiffs may indeed have an equitable interest in the suit property arising from being possible beneficiaries of the estate of their mother Lucia Wambui Hunyu, in whose name the suit property is registered. However, such an equitable interest can only bind the Defendant who is a third party, if the Defendant had notice of the same. The Defendant has pleaded in his replying affidavit that he is a stranger to the Plaintiffs and has never dealt with them. The Plaintiffs also state in their Replying Affidavit that they were never consulted by the Defendant before the excavations on the suit property commenced.

It is therefore the finding of this Court that it cannot hear and determine the application dated 6th September 2011, as the Plaintiffs have no *locus standi* to bring the same, and the application is struck out for this reason only.

The Plaintiffs shall bear the costs of the application.

Dated, signed and delivered in open court at Nairobi this ____10th____ day of ____May____, 2012.

P. NYAMWEYA

JUDGE