



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

Succession Cause 304 of 1996

IN THE MATTER OF THE ESTATE OF WAMBUI NDUTU (DECEASED)

SAMUEL NDUTU NJOROGE APPLICANT

VERSUS

TERESIAH NJERI WAMBUI RESPONDENT/PETITIONER

RULING

On 9th July, 2009, the Applicant filed an application for Revocation of Grant under **Section 76** of the **Law of Succession Act**, and **Rules 44, 59 and 73** of the **Probate and Administration Rules**. Accompanying that application was another application under Certificate of Urgency of the same date brought under **Rule 73** of the **Probate and Administration Rules**. The latter Application sought orders that –

1. This Honourable Court be pleased to issue a prohibitory order prohibiting the Respondent, her Agents and/or employees from carrying out or committing any dealings on land parcel Kiganjo/Gachika/2575 originally known as land parcel Kiganjo/Gachika/839 pending the inter partes hearing of this application.

2. This Honourable Court be pleased to issue a prohibitory order prohibiting the Respondent, her Agent servants and/or employees from carrying out or committing any dealing on land parcel Kiganjo/Gachikca/2575 originally known as Kiganjo/Gachika/839 pending the hearing and determination of this cause.

The application is supported by the Applicant's affidavit sworn on 9th

July, 2009, and is based on the grounds that –

(a) The Applicant together with other beneficiaries of Wambui Ndotu resides on the subject land where they have constructed permanent houses.

(b) The Applicant has of late seen different vehicles with different occupants coming to the subject land and the Respondent herein taking the occupants around the land thereby leaving the Applicant with no doubt that she intends to dispose of the land by way of sale.

In opposing the application, the Respondent filed a replying affidavit

sworn and filed in Court on 26th August, 2009. In that affidavit, she confirms that the deceased (i.e. the Applicant's mother) died on 19th January, 1994 and a Grant of Letters of Administration intestate was issued to her on 25th August, 1998 and subsequently confirmed on 21st July, 1999. She also attests that the children of the deceased are alive but they have never had any interest in the estate of the deceased as they knew that the deceased was married to her by way of a woman-to-woman marriage. Contrary to the Applicant's contention that he has been living on the suit premises, the Respondent avers that the contention is untrue and that the Respondent forcibly entered the land when his grandmother died and constructed a semi-permanent house so as to lay claim on the land. Finally, the Respondent denies that different people have been visiting her on the suit land with the intention of purchasing the same. Instead, she deposes that her children are the ones who have been visiting her on the suit land and she has no intention whatsoever of selling her inheritance. She maintained that the Applicant has all along known of the Succession Cause as the same was published in the Kenya Gazette before the Grant was issued and subsequently confirmed, and therefore his allegations have no basis and his application should be dismissed with costs.

With leave of the Court, the parties filed their respective skeleton submissions. The Applicant's case is that the Respondent filed a Succession Cause No. 247/1994 at Thika Law Courts in respect of the deceased. In that Cause, substantive orders were issued against the Applicant herein and his siblings. However, instead of proceeding with the Cause at Thika, the Respondent filed this Cause without the knowledge of the Applicant and obtained a Grant which was subsequently confirmed.

It is the Applicant's case that the Respondent's conduct was an abuse of the process of the Court. He therefore submits that in these circumstances, it is imperative that the Court should grant the orders sought in order to preserve the estate pending the hearing of the application for revocation of the grant.

In her response, the Respondent contends that the occupants of different vehicles coming to visit her were her children and not buyers of the suit premises. She attested that she had no intention of selling her inheritance, and that if she wanted to sell the land in question, she would have sold it a long time ago and would not have waited for ten years to do so. She further submits that the application is incompetent, bad in law and an abuse of the Court due process as the Applicant is a grandson of the deceased and it is his mother who ought to have filed this application but not the Applicant himself. She concluded by urging the Court to dismiss the application.

After considering the application, the main issue for determination is whether the preservative orders sought should be granted. In order to answer that question, I note that in her response, the Respondent states that the people coming to visit her are her own children. If that had been so, her children would, in all probability, be well known to the Applicant and alarm bells would not have rang to the Applicant since such children are his relatives. On a balance of probability, I find that the Respondent is not telling the truth on that issue. Consequently, her statement that she has no intention to sell the suit property ought to be taken with caution. In any event, if she is telling the truth when she says that she has no intention of selling the property, then she will not suffer any prejudice if preservative orders are granted.

For these reasons, prayer (b) of the application by Chamber Summons dated 9th July, 2009 and made pursuant to **Section 73** of the **Probate and Administration Rules** is hereby granted as prayed.

Parties should proceed to take a date for the hearing of the main application for Revocation of Grant.

Orders accordingly.

DATED and DELIVERED at NAIROBI this 3rd day of May, 2012.

L. NJAGI
JUDGE