



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
SUCCESSION CAUSE 2419 OF 2001

LOISE WAMBUI NJOROGE APPLICANT

VERSUS

ALBERT THUO CHEGE 1ST
RESPONDENT

JULIE MUTHONI CEGE..... 2ND
RESPONDENT

REBECCA CEGE..... 3RD
RESPONDENT

R U L I N G

This Ruling relates to the application dated 21.12.2011 made by **LOISE WAMBUI NJOROGE, (the Applicant)**, against **Messrs ALBERT THUO CHEGE, JULIE MUTHONI CEGE and REBECCA CEGE** (the 1st, 2nd and 3rd Respondents respectively). The application seeks in prayers 3, 4, 5 and 6 orders as follows:

3. Pending the hearing and determination of this application, a temporary injunction do issue restraining respondents Albert Thuo Cege, Julie Muthoni Cege and Rebecca Cege whether by themselves, servants, workers or agent or otherwise form interfering in any way whatsoever with the quiet enjoyment of the premises situate on L.R. NO.209/386/6 at Hurlingham Nairobi where the office of the Applicant is situate.

4.The Order given on the 10th November 2011 appointing Albert Thuo Chege as a Co-administrator together with Benson K. Mukuria be set aside and I as the widow of the deceased be appointed the administrator pending the determination of the application challenging the validity of the Will of my late husband.

5.The O.C.S. Kilimani Police Station be mandated to enforce the Court Order.

6.The Court do issue any other Order it may seem fit to grant.

The application was made on the grounds that the Respondents have threatened to evict or cause the

Applicant to be evicted from the office premises she occupies on L.R. 209/386/6 at Hurlingham, Nairobi, contrary to the court order of 10th November 2011 and on the further ground that the Respondents have refused to consult Benson K. Mukuria, a co-administrator, and instead have threatened to throw the Applicant out of the said office space and from her matrimonial home.

The application is supported by the Applicant's affidavit sworn on 21.12.2011.

The application was opposed by the Respondents who rely on the 1st Respondent's replying affidavit sworn on 16.1.2012.

The deceased, **PETER CHEGE KANGORO**, died on 31st August 2001 aged 65 years. He is said to have left a Will dated 31.5.1999 in which he appointed as his Trustees Barclays Trust Investment Services Limited. A codicil dated 5.10.1999 is also said to have been executed by the deceased. It revoked the appointment of Barclays Trust Investment Services Ltd. and instead appointed BEN MUKURIA, an advocate, to be his Trustee and Executor.

On 3/10/2001, a Petition for Grant of Probate of Written Will was made by Ben Mukuria. It was gazetted on 30.11.2001. Objection to the making of the Grant was on 21.12.2001 filed by Albert Thuo Cege, Julie Muthoni Cege and Rebecca Cege, the Respondents herein. They described themselves as the children of the deceased and as beneficiaries of the deceased's Estate who were dependent on the deceased but in respect of whom the Will had not made provision for. The record shows that the deceased was survived by the Respondents who are his son and two daughters and by Albert Kangoro Cege, another son, and by a former wife, Cecilia Cege.

In her affidavit sworn on 21.12.2011, the Applicant alluded to the court orders of 10th November 2011. A perusal of the said orders shows that the Respondents did on 30.10.2009 present an application to court in this cause in which they obtained injunctive orders restraining Benson Mukuria from interfering with the deceased's estate and the assets constituting the estate and in particular from collecting rent or any income whatsoever. Benson K. Mukuria was also ordered to produce to court a full and accurate inventory and account of the assets and liabilities including tax liabilities of the deceased and a full and accurate account of dealings therewith and all monies generated and collected from the assets of the estate. The court also appointed Albert Thuo Cege to be a co-administrator together with Benson K. Mukuria to administer the Estate of the deceased pursuant to the consent filed in court on 27.4.2004.

In their Replying Affidavit sworn on 16.1.2012, the Respondents averred that they had not attempted to evict the Applicant from the said offices nor from the Applicant's matrimonial home at Athi River where, the Respondents stated, she no longer lives. The Respondent further averred that the Applicant "*has been working with Benson K. Mukuria for the last 10 years in relation to the deceased's Estate.*" They annexed copies of cheques issued to the Applicant by Benson K. Mukuria which are said to have been signed by the Applicant and Benson K. Mukuria.

A perusal of the pleadings in this cause shows that a court order was extracted on 26.11.1997 following a consent letter filed on 31.7.1997 in Nairobi H.C.C.C. No.306 of 1992 (O.S.) involving the deceased's former wife, Cecilia Cege, as Plaintiff and the deceased as the Defendant. The order by consent shows that the deceased retained after the settlement between him and his said former wife properties which included Halfort Investments Ltd which is the registered proprietor of L.R. 20/386/6 at Hurlingham, Nairobi.

In the Respondents' replying affidavit sworn by the 1st Respondent, the Respondents contend that the orders sought by the Applicant would hinder the 1st Respondent in his duties as a duly appointed co-administrator and that the orders dated 23.12.2011 should be discharged.

Mr. A. M. Mbindyo, the learned advocate for the Applicant, submitted that the Applicant was the deceased's widow and that the 1st administrator intended to evict the applicant from the said property. Mr. Peter Cege Kangoro, he said, was an Interested Party. The 1st Respondent had obtained ex parte orders,

he said, on 10.11.2011 which should be set aside and new orders made appointing the Applicant an Administrator pending the determination of the application challenging the validity of the Will of the deceased.

Mr. J. K. Kibet, the learned counsel for the Respondents opposed the application and relied on the Respondents' replying affidavit sworn on 16.1.2012 by the 1st Respondent. He contended that the 1st Respondent acted in accordance with court orders and that the Applicant and the Interested Party are not party to this successions cause. It was Mr. Kibet's submission that the Applicant and the Interested Party had no *locus standi* and had "just walked into" the proceedings. He pointed out that the affidavit of the interested party does not show his capacity. It was Mr. Kibet's submission that the ex parte order was obtained "on the basis of the situation obtaining as at 22.12.2011."

I have duly perused the application and the affidavits filed in support of and against the application. I have also duly considered the submissions made by **Mr. Mbindyo for the Applicant and Mr. Kibet for the Respondents**. The Will left by the Deceased which is yet to be proved acknowledges the Applicant as the wife of the deceased and Albert Kangoro Cege as the deceased's son. They cannot therefore be termed as strangers or busybodies in these proceedings before the validity of the Will has been established. However, they have not applied to challenge the order that made the 1st Respondent a co-administrator and their contention that the order was wrong cannot give rise to any relief as it is made in a vacuum. The Applicant's contention is that as the widow to the deceased, and a beneficiary in the Estate, she is entitled to be kept abreast of the administration of the Estate by the administrators. She avers that the Respondents were provided for by the deceased during the settlement reached between the deceased and his former wife, Cecilia Cege. She avers that her offices at Hurlingham are on L.R. 209/386/6 which is owned by **Halfort Investments Ltd** and that the deceased held 99% of the shares in Halfort Investments Ltd. before he died. The grant of Probate in this cause has not yet been made in view of the objections filed and the determination of the heirs or beneficiaries of the estate of the deceased is yet to be made. In the meantime, the Applicant has brought herself on board in these proceedings. On the face of it, she appears to be a widow to the deceased. She is named as a legatee in the deceased's Will which is yet to be proved. She cannot be dismissed as an intruder. The court shall consider the evidence and make a determination on the claims made. The Applicant seeks removal of Benson K. Mukuria by having the order appointing him set aside. She has not laid a plausible basis for the order she seeks. At any rate, there is an order requiring Benson K. Mukuria to account for funds. That order should not be scuttled. There is also no basis for the order sought for the removal of Albert Thuo Chege as a co-administrator. There is no cross-petition either by the Applicant. I am disinclined to appoint her as an administrator in the manner she seeks. In the result, prayer 4 of her application fails.

As regards the order sought in prayer 3, it is in the interest of justice to ensure that the *status quo* obtaining is maintained pending determination of the issues raised in this case. There is no evidence to suggest that the Applicant occupied the offices *qua* tenant or that her claim that she was the deceased's wife is a hoax. It would defeat the ends of justice if, before the court makes determination on the issues as to the validity of the Will and as to who the beneficiaries are (who are entitled to the estate) and also as to the distribution of the Estate, the Applicant were to be removed from the premises. That would be prejudicial to the Applicant were it to turn out later that the Will is valid and the Applicant is a widow to the deceased and is therefore entitled to the Estate or part thereof as a beneficiary. I am therefore inclined to stop by injunction the Respondents from interfering with the Applicant's quiet enjoyment of the premises at Hurlingham, Nairobi, which stand on LR 209/386/6 which is owned by Halfort Investments Ltd. in which the deceased held 99% shares.

Accordingly,

1. I make orders in terms of prayer 3 of the Applicant's chamber summons application dated 21.12.2011.
2. I decline to give the order sought in prayer 4 of the application dated 21.12.2011 and I also decline to make orders in terms of prayers 5 and 6 of the said application.
3. Each party shall be at liberty to apply.

4. The costs of the application shall be in the cause.

Dated at Milimani Law Courts, Nairobi, this 28th day of June 2012.

G.B.M. KARIUKI, SC

JUDGE

COUNSEL APPEARING

Mr. J. K. Kibet of Ochieng Onyango Kibet & Ohaga Advocates for the 3 Respondents

Mr. A. M. Mbindyo for the Applicant

Miss Muli for Mr. McCourt for Tony Chege, a beneficiary

Mr. Ouma for Mr. Okwach for Mr. B. Mukuria, a Respondent

Mr. Kugwa – Court Clerk