



REPUBLIC OF KENYA

IN THE HIGH COURT

AT ELDORET

Probate & Administration 6 of 1983

**IN THE MATTER OF THE ESTATE OF KAMAU NGANGA**

**RULING**

I have before me an application by way of summons by **Margaret Wanjiku Mwaura** (hereinafter “the applicant”) expressed to be brought under the provisions of Section 47 of the Law of Succession Act (Cap 160) and Rules 59 and 73 of the Probate and Administration Rules. The applicant seeks the following main orders of the court:-

**“1) That Paul Nyoro Nganga (hereinafter “the respondent”) either by himself, his family, his agents and or servants be permanently restrained from trespassing, cultivating occupying grazing and or in any other manner from interfering with parcel No. Uasin Gishu Kondoo Settlement Scheme 183 (herein after “the suit land”)**

**2) That the Officer Commanding Station (O.C.S) at Tarakwa Police Station do ensure the full compliance of this order.**

**3) That the respondent be compelled to render a full time and accurate account and to deposit such sums that he has earned on account or in the form of income derived accrued from the cultivation of crops in the suit land to date for onward transmission of such income to the applicant.**

The application is based on the following grounds:-

**(i) That the applicant and her sons Joseph Nganga Kamau and Peter Njoroge Kamau (hereinafter “co-proprietors”) were registered as owners of the suit land pursuant to a court order dated 4<sup>th</sup> February, 2002,**

**(ii) That the respondent has persisted in his Illegal trespass and cultivation of the suit land to which he has no claim and has not accounted or remitted the income derived to the applicant.**

**(iii) That at no time did the applicant or the co-proprietors allow, authorize or permit the respondent to ingress or cultivate the suit land.**

**(iv) That the respondent’s conduct is patently illegal and wrongful hence it is necessary that restraining orders be granted.**

**(v) That unless the respondent is restrained as prayed then the applicant and or the co-proprietors**

**stand to suffer immense loss and damages as the respondent is likely to continue unfairly and unjustly enriching himself to the detriment of the applicant and her co-proprietors.**

**(vi) That the court has unfettered jurisdiction and discretion to grant the reliefs sought to prevent further hardship and miscarriage of justice.”**

There is an affidavit in support of the application sworn by the applicant which in the main reiterates the above grounds. When the respondent was served he filed no response. The application therefore proceeded ex-parte on 14<sup>th</sup> May, 2012.

I have considered the application, the supporting affidavit and the annexures thereto. Having done so I take the following view of the matter. As the heading shows, the parent proceedings commenced by way of a petition for letters of administration intestate to the Estate of **Kamau Nganga** (deceased). The applicant would appear to have objected to the grant made to the respondent which grant was annulled and/or revoked. The applicant and the co-proprietors were then eventually registered as proprietors of the suit land.

On the conclusion of those objection proceedings and the eventual registration of the applicant and the co-proprietors as owners of the suit land, the administration of the estate of the Late **Kamau Nganga** (deceased), in my view, came to an end. The applicant does not suggest that any part of the estate of the deceased remained unadministered after the objection proceedings were concluded. Indeed the claim made against the respondent in this application is not for the benefit of the estate of the deceased but for the benefit of the applicant and her co-proprietors as owners of the suit land since the same is no longer an asset of the estate of the deceased. The applicant and the co-proprietors have rights as proprietors of the suit land which rights may be enforced by them in their own right by way of an ordinary suit.

The provisions invoked by the applicant apply when the dispute the court is called upon to resolve falls under the purview of the Law of Succession Act aforesaid. The dispute between the applicant and the respondent is not such a dispute. It is a dispute purely between registered proprietors and the respondent as a trespasser. It is not a dispute in the administration of the estate of **Kamau Nganga** (deceased). The applicant appreciates this position and that is the reason why her application is not an interlocutory application. The orders sought are final and definitive and are not dependent on the succession cause already concluded.

For those reasons, and even though the application was not contested, I must decline the applicant's application dated 24<sup>th</sup> April, 2012. It is dismissed.

I make no order as to costs.

It is so ordered.

**DATED AND DELIVERED AT ELDORET  
THIS 11<sup>TH</sup> DAY OF JUNE, 2012.**

**F. AZANGALALA  
JUDGE**

**Read in the presence of:**

**Ms. Karuga H/B for Mr. Njuguna for the Applicant.**

**F. AZANGALALA  
JUDGE  
11<sup>TH</sup> JUNE, 2012**