



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE 2230 OF 2004

ZIPPORAH MUTHONI KARORI.....APPLICANTS

VERSUS

DAVID GITIRIA KARORI.....RESPONDENT

RULING

1. This ruling is delivered in the Notice of Motion dated 5th March 2012 in which the applicants, Zipporah Muthoni Karori, Jenniffer Wangui Karori, Eunice Mira Karori, Lucy Njeri , Hannah Wagikuyu, Joyce Wairimu Karori and Judy Wambui Karori seek restraining orders against the respondent, pending the hearing and determination of their summons of cancellation of grant dated 1st March 2011. The grant sought to be revoked was issued to the respondents and one Florence Wanjiru Karori now deceased on 20th September 2004. The 2nd administrator, who was the mother of both the applicants and respondent and the widow of the deceased John Karori Gitiria, died prior to the distribution of the estate.
2. Specifically, the applicants wish to have the respondent restrained by a way of an injunction from alienating the estate property in the manner stated in paragraph 2 of the application and from evicting the applicants from the family land or denying /restricting their access thereto. The applicants pray also the respondent be compelled to render a full and accurate account of their late father's estate and that the OCS Kikuyu be directed to facilitate the enforcement of the injunctive order by providing security.
3. The application is premised on 7 grounds set out in the body thereof and supported by the affidavit of Zipporah Muthoni, sworn on 1st March 2011. Inter alia, the applicants state that the respondent, who is their only brother has done nothing towards the distribution of the estate and after their mother (2nd administrator) died. They say that the respondent evicted all the beneficiaries from the family land and has embarked on wanton destruction and wastage of the property, and to exclusively appropriate the benefits of their deceased parent's investment to the detriment, of the respondents.
4. In the supporting affidavit, Zipporah describes the respondent as a violent man who has gone to an extent of issuing death threats to herself and her sons if they dare return to the land. She depones that, despite lodging the complaints with the local administration, the applicants have not received any help, hence the filing of these proceedings. Annexed to the supporting affidavit are pictures of logs and off cuts from trees felled by the respondent on the estate land.
5. In reply to the application, the respondent has filed a 26 paragraph Replying Affidavit, sworn on 16th April 2012 and filed on the same date. He denies all the allegations leveled against him by the applicants stating, inter alia, that he did not evict the 1st applicant but she left on her own volition. He depones that the applicants are the ones who have exhibited a violent attitude towards him and continue to harass him

by filing complaints against him with the police. He contends that the filing of such complaints by the applicants demonstrates ill intent on their part, thus tainting their stand before the court.

6. The respondent has deponed that the trees felled by him are his own property, although admitting that they grow on the family land. He expresses the opinion that to revoke the grant and or appoint any of his sisters as co-administrators, as proposed in the summons of revocation would delay the administration further. He sees the filing of this summons for revocation as having been done in bad faith with the sole aim of intimidating him.

7. There is no dispute that the subject matter is estate property and constitutes the family home. It is also not disputed that the applicants are entitled to inherit their late father's estate and that the 1st applicant has lived on the said land as an unmarried daughter, and that she enjoyed peaceful occupation and possession thereof until the demise of the co-administrator.

8. Summons for confirmation of the grant was filed on 26th August 2005 with the consent of all beneficiaries. Paragraph 5 of the affidavit filed in support of the summons for the confirmation identifies the suit property, namely, Kagia Farm Number 4885/58 as being part of the estate property in addition to Nyathuna Plot 419, a fixed deposit account with Standard Chartered Bank, a savings account with the same bank and an account with Post Bank, stating that the said asset would devolve to the widow Florence Wanjiru Karori (Deceased). In his affidavit, sworn on 13th July 2005, in support of the summons of the confirmation the respondent deponed that it was true that the estate was to devolve to the said Florence Wanjiru Karori.

9. The respondent's co-administrator died on 11th July 2006. Instead of consulting with the beneficiaries, all of whom had consented to the grant being confirmed to the two administrators, the respondent has instead taken it upon himself to deal with the estate property as he wishes. He depones in paragraph 14 of this replying affidavit that the portion of the suit land where he has cut trees was bequeathed to him under a will. Despite stating that he had annexed a copy of the said will to his replying affidavit as Annexure "DGK 3" no such document is before court. Annexure "DGK" is a copy of the affidavit of justification of proposed sureties sworn by Eliud Makumi Njoroge and Moses Gitiria Mbuciri on 2nd June 2004.

10. This court has seen a copy of minutes of a meeting held on 18th July 2010 between six applicants (Joyce Wairimu Karori absent with apology) in the absence of the respondent. The agenda of the meeting was to discuss the conduct of the respondent as administrator and to agree on the structure of the administration of the estate. It is stated in the said minutes that several requests had been made to the respondent as the surviving administrator to meet with the applicants to discuss the future of the estate but he failed to respond.

11. The meeting of 18th July 2010 resolved that due to the hostility and unco-operative attitude of the respondent, Jeniffer Wangui Gakuo and Zipporah Muthoni Karori be proposed to take over as joint administrators' in order that the pending issues in relating to the estate may be resolved. The minutes of the said meeting are annexured to the supplement affidavit of Zipporah Muthoni filed on 21st June 2011. Also annexured to the said affidavit and marked "ZM4" is a document, albeit in the kikuyu language, said to represent the wishes of the deceased in regard to his estate.

12. Nothing has been filed to reply the supplementary affidavit, which therefore means that contents thereof remain unchallenged. The respondent, by virtue of his appointment as administrator of the estate was constituted a trustee of the applicants in the administration of their late father's estate. He made an undertaking to faithfully administrator the estate according to law and to render a true and just account thereof whenever required by the law to do so.

13. **Under Section 71(1) of the Law of Succession Act (Cap 160 of Laws of Kenya)**, the respondent, as the holder of the grant is mandated to apply for its confirmation in order to distribute the capital assets. **Under Section 81** of the said Act, the powers and duties of the administrators became vested in the

respondent subsequent upon the death of his co-administrator. By neglecting to ensure that the administration of the estate proceeds to conclusion for the benefit of all the beneficiaries, the respondent has abused his duties to the extent that the estate property is now in danger of being wasted, damaged or alienated by the respondent to the detriment of the applicants.

14. The respondent's arrogance, indifference and apparent belligerence is quite obvious from the facts and documentation filed, including the respondent's own affidavit. I am satisfied that the injunctive orders sought are merited, being persuaded that the applicants have demonstrated a prima facie case against the respondent, with a real likelihood of success and that they stand to suffer irreparable loss incapable of compensation in damages, in the event that the injunctive orders do not issue.

15. In view of the above, I allow the application and grant the orders sought. The applicants, being beneficiaries' of the estate property need not to provide security for the issuance of the orders hereby granted. Their interest as co-heirs with the respondent is, in my view, adequate security.

11. Restraining orders shall issue accordingly with no order as to costs .

DATED, SIGNED and DELIVERED at NAIROBI this 27th DAY OF JULY, 2012.

M.G. MUGO
JUDGE

In the presence of :

for the plaintiff.

for the respondent.