



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
SUCCESSION CAUSE NO. 68 OF 1988

**IN THE MATTER OF THE ESTATE OF SOLOMON NGARI MONJO ALIAS NGARI MONJO
– DECEASED**

WILLIAM NGATIA NGARI.....APPLICANT

VERSUS

**1. JOSEPH WACHIRA NGARI.....
.....RESPONDENTS**

2. PETER GICHURU NGARI

RULING

Pursuant to *rule 73* of the Probate and Administration Rules, **WILLIAM NGATIA NGARI**, (Applicant), took out the Summons General dated 19th January 2010 in which he sought for the following orders:

- (a) That the first Respondent be restrained from utilizing 1. acres in the land parcel KIRIMUKUYU/NGANDU/50, which was previously utilized by the Applicant's mother, pending the hearing and determination of this case.***
- (b) That the second Respondent be restrained from utilizing 3.1 acres in the land parcel RUGURU/KARUTHI/418, which was previously utilized by the deceased, pending the hearing and determination of this case.***
- (c) That the costs of this application be provided for.***

The application is supported by the affidavit of the Applicant sworn on 19th January 2010. **JOSEPH WACHIRA NGARI**, the 1st Respondent herein, filed a replying affidavit he swore on 17th February 2010 to oppose the application.

It is the submission of the Applicant that the Respondents have interfered with the *status quo* as allocated by the late Solomon Ngari. It is further alleged that the Respondents' conduct may cause a

breach of peace and may lead to loss of life. The Applicant has deposed in his affidavit that the 1st Respondent has threatened him with death and he is apprehensive that he may carry out his threat by harming him and his family. The Applicant further alleged that Peter Gichuru Ngari, the 2nd Respondent herein has been utilizing **L.R. NO. RUGURU/KARUTHI/418** to the exclusion of others despite the fact that he is supposed to share it with one Ronald Kariuki. The Applicant also alleged that the 2nd Respondent has threatened him and his brothers with death if they ever stepped on **L.R. NO.**

RUGURU/KARUTHI/418. The Applicant has beseeched this Court to issue an order to restrain the 2nd Respondent from utilizing 3.1 acres of **L.R. NO. RUGURU/KARUTHI/418** in order to maintain peace within the family. The 2nd Respondent urged this Court to dismiss the application for lack of merit. He averred that the deceased did not allocate portions of the land known as L.R.

KIRIMUKUYU/NGANDU/50 and **L.R. NO. RUGURU/KARUTHI/418**. He claimed the deceased allocated to him a portion of L.R. NO. **KIRIMUKUYU/NGANDU/50** and that other allocations were done by their brother, David Solomon Monjo, deceased. The 1st respondent further denied having forcibly taken over the portion belonging to their mother. He denied issuing death threats against the Applicant.

Having considered the rival submissions, there is no doubt that this Court is being beseeched to exercise a discretionary power to issue orders of injunction to restrain the Respondents from utilizing portions of land comprising in **L.R. NO. KIRIMUKUYU/NGANDU/50** and **L.R.**

RUGURU/KARUTHI/418. It is said the Respondents have issued death threats against the Applicant and that the situation on the ground is volatile. Both sides do not dispute the fact that they have had a criminal charge preferred against Joseph Wachira Ngare (1st Respondent) vide **KARATINA S.R.M.CR. CASE NO. 542 OF 2006**. He was even tried and convicted for assault vide **KARATINA S.R.M. CRIMINAL CASE NO. 217 OF 2007**. The criminal proceedings are closely related to a claim over the

property of their father Solomon Ngari, Deceased. There is evidence also that the 1st Respondent previously was charged with the offence of creating a disturbance likely to cause a breach of peace vide **KARATINA S.R.M.CR. CASE NO. 405 OF 2005**. In all the cases, he was convicted and sentenced. The annexures attached to the affidavit of William Ngatia Ngare indicates that there was a time the Ag. Chief Kirimukuyu Location had advised individuals who had leased the deceased's land from the 1st Respondent to keep off. There is also evidence that the Applicant has complained to the Ngandu Sub Location Assistant Chief about the 1st Respondent's actions. There is evidence on record that a temporary grant in respect of the Estate of Solomon Ngare Monjo, deceased, was issued in the joint names of the Respondents on 14th May 2009. This court at the same time issued an order to maintain the *status quo* in respect of **L.R. NO. KIRIMUKUYU/NGANDU/50** and **L.R. NO.**

RUGURU/KARUTHI/418 pending the distribution of the Estate. An application for Confirmation of Grant dated 19th September 2008 has been filed by the 2nd Respondent. The 1st Respondent and the Applicant herein have each filed an affidavit of Protest. The application for Confirmation of Grant and the Protest are yet to be heard and determined. The Applicant has complained that the Respondents have interfered with the *status quo* as allocated by the deceased. The 1st Respondent did not deny the allegation that he interfered with the *status quo*. He simply said he has occupied the portion he was given by the deceased. The 2nd Respondent did not deem it fit to respond to the allegations specifically made against him. There is no doubt that the respondents are aware that there was an order issued by this Court for the maintenance of the *status quo* pending the Confirmation of Grant. After carefully considering the material placed before this Court and the submissions made by the parties, I am convinced that the Respondents have interfered with the *status quo* yet they know they were barred from doing so before confirmation of the grant. I am satisfied that the order should be given in order to put everybody on an equal footing and as per the time of the deceased's death. I allow the Summons General dated 19th January 2010 as prayed save that costs shall abide the outcome of the Summons for Confirmation of Grant and the Protest. Parties to this dispute should expedite the conclusion of this matter to stem further wrangles.

Dated and delivered at Nyeri this 11th day of February 2011.

J. K. SERGON

JUDGE

In open court in the presence of Mugo for the 2nd Respondent. Kingori holding brief for Mwai for Applicant. No appearance for Kamwenji for Respondent.