



**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**SUCCESSION CAUSE NO. 543 OF 2009**

**IN THE MATTER OF THE ESTATE OF PHARIS MWANGI NGIGE (DECEASED)**

GIBSON GACHERU MWANGI.....OBJECTOR/APPLICANT

**VERSUS**

TABITHA WANGARI MWANGI.....PETITINER/RESPONDENT

**RULING**

**Pharis Mwangi Ngige** died intestate on 30<sup>th</sup> April, 1998. These proceedings were instituted by the deceased's two widows **Philis Kabura Mwangi** and **Tabitha Wangari Mwangi** in Nyahururu PMCC No. 29 of 1999. The grant was confirmed on 15<sup>th</sup> July, 1999 and the deceased estate, which composed **L.R. Nyandarua Kahuru 13294** was shared equally between the 2 widows which resulted in two parcels; 3343 and 3344. The 1<sup>st</sup> widow got parcel 3343 which she subdivided into 4 equal plots A, B, C, D and the Respondent who is a son of the 1<sup>st</sup> widow was given parcel A3343 but the Respondent's mother insisted that it be registered in her name so as to protect the interests of the Respondent (Gibson Gacheru's) children and wife who is currently estranged from the Respondent and as he would want to disinherit the wife contrary to the deceased's wishes.

**Sam Karuga Mwangi**, a brother to the Respondent who swore the affidavit in support of the application, deponed that the mother subdivided the land into four parcels and each beneficiary was entitled to 8 acres, but the Respondent has been using the whole of the 32 acres to the exclusion of the other beneficiaries and has threatened to harm anybody who attempts to try to use their land. He has even been leasing the land to 3<sup>rd</sup> parties. Despite the fact that the Respondent filed objection proceedings vide application dated 2<sup>nd</sup> October, 2009, seeking to revoke the grant, the same has not been prosecuted. That is why the applicant filed this application pending the hearing and determination of the objection proceedings that the court do restrain the respondent by himself or his servants from entering, tilling or interfering with the applicant's parcels B, C and D of parcel **Nyandarua/Kahuru/3343** as was subdivided in 2003. **Ms. Njoroje**, counsel for the applicant submitted that it is in the 1<sup>st</sup> house that there is a dispute. The 2<sup>nd</sup> house has shared its portion without disagreement.

The Respondent opposed the application and filed grounds of objection and a replying affidavit. He was represented by **Mr. Njuguna**. His grounds of objection are that the application is misconceived; That the applicants herein are not party to the objection proceedings; That the subject matter of the objection is Plots 3346, 3342, 3348 and 3345 and the outcome of the objection proceedings is likely to affect the titles, and that his application should take precedence; That this application is meant to circumvent the objection proceedings. The objector claims to have filed the objection proceedings because him and his sister Irene Njeri Mwangi were left out of the distribution of the estate.

The Respondent has not denied the allegation made by the applicant that he has occupied the whole of Parcel 3343 comprising 32 acres which belongs to the 1<sup>st</sup> house or that he has denied his siblings their portions B,C and D.

Sam Karuga Mwangi is a beneficiary of the deceased's estate and so is the objector. The two are brothers. The administrators of the estate of Pharis Mwangi are the two widows of the deceased. It has not been explained why the 1<sup>st</sup> administrator, Philis Kabura, the mother of the applicant did not file these proceedings. She is the one who was charged with the distribution of the estate and if one of the beneficiaries has not complied, she should move the court.

The subdivision of parcel 3343 is said to have been done way back in 2003. According to the Applicant, the Respondent has occupied the said parcel since. It has not been explained why the delay in bringing this application for the last 8 years. I question that delay because, similarly, the Respondent filed objection proceedings in 2009, 10 years after the grant was confirmed. The objection proceedings are still pending. Directions were given by the court on 21/6/2010, that the matter do proceed by way of *viva voce* evidence. To-date, none of the parties has sought a hearing date for the objection proceedings. After the directions were given, the Applicant then filed this application. The objection proceedings touch on the whole of the deceased's estate including the share of the 2<sup>nd</sup> house, belonging to Tabitha Wangari Mwangi. If the objection were to succeed, the whole estate will be affected, including this portion which the Respondent is said to be holding to the exclusion of his siblings.

I find that granting any orders in this application may be asking this courts to do a double task. It is my view that the issue herein be determined alongside the objection proceedings. For the foregoing reasons, I decline to grant the order sought. The application is dismissed. Costs to abide the objection proceedings.

**DATED and DELIVERED this 10<sup>th</sup> day of June, 2011.**

**R. P. V. WENDOH  
JUDGE**

**PRESENT:**

Ms Wanjiru holding brief for Ms Njihia Njoroge for Respondent  
Ms Njoroge for Applicant  
Kennedy – Court Clerk