

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO.746 OF 2010
IN THE MATTER OF THE ESTATE OF DORCAS WANJIKU WANJAMA – (DECEASED)

JULIUS MAINA WANJAMA.....

....APPLICANT

VERSUS

PETER WANJAMA THEURI.....1ST RESPONDENT

PETER MUIKUNU WANJAMA.....2ND RESPONDENT

RULING

The applicant filed summons before this court seeking to revoke the grant that was issued to the respondents by the Kangema Senior Resident Magistrate's Court in Succession Cause No.78 of 2009 in respect of estate of Dorcas Wanjiku Wanjama (deceased). The applicant alleged that the said grant was obtained by the respondents after they had concealed all the true dependants and survivors of the deceased. He further alleged that the grant was defective in substance because the 1st respondent had grossly understated the value of the properties that comprise the estate of the deceased. Contemporaneously with filing the summons for revocation of grant, the applicant filed an application seeking to restrain the 2nd respondent from alienating or leasing out to strangers the suit property, namely, Parcel No.Loc.19/Nyakianga/1514 (the suit property), pending the hearing and determination of the application for revocation of grant. The applicant further prayed that the 2nd respondent be compelled to evict all the strangers he had leased the parcel of land pending the hearing and determination of the substantive summons for revocation of grant. The application is supported by the annexed affidavit of the applicant. He swore a further affidavit in support of the application. The application is opposed. The 1st respondent swore a replying affidavit in opposition to the application. The 2nd respondent and Stephen Kiragu Wanjama swore further replying affidavits in opposition to the application.

At the hearing of the application, this court heard oral submissions made by Mr. Kang'ata on behalf of the applicant and by Mr. Kirubi for the respondents. I have considered the said submissions and further read the pleadings filed by the parties herein in support of their respective opposing positions. The issue for determination by this court is whether the applicant made a case for this court to restrain the respondents in the manner proposed in the application. The facts of this application are more or less not in dispute. The applicant is a son of the 1st respondent. The 1st respondent is also the father to the 2nd respondent. The 1st respondent was the owner of the parcel of land known as Loc.19/Nyakianga/864 which measured about 8.9 acres. The 1st respondent caused the said parcel of land to be sub-divided into five (5) portions namely, Loc.19/Nyakianga/1511,1512,1513,1514&1515. The 1st respondent was married to three (3) wives namely, Ruth Nyambura Wanjama, Margaret Wacuka Wanjama and Dorcas Wanjiku Wanjama. Ruth Nyambura Wanjama and Dorcas Wanjiku Wanjama are now deceased. The 1st respondent caused two of the sub-divided parcels of land to be registered in the names of Dorcas Wanjiku Wanjama (the deceased). The two parcels of land are Loc.19/Nyakianga/1514&1515. According to the respondents, it was the understanding of the family that parcel No.Loc.19/Nyakianga/1514, although registered in the name of the deceased, actually belonged to the first house of Ruth Nyambura Wanjama. According to the affidavits filed in court, it was apparent that the family of the first house of Ruth Nyambura Wanjama have resided on the suit property for a considerable period of time. The applicant's claim to the effect that the suit parcel of land had been leased out to strangers is not supported by evidence.

Having evaluated the facts of this application, it was clear to the court that, prima facie the dispute between the applicant and the respondents is in relation to whether the 2nd respondent (being a member of the first house) is entitled to inherit the suit property. That issue will be determined by the court when it will substantively hear the summons for revocation of grant. Before that dispute is resolved by the court, status quo as it exists on the ground should be maintained. The 2nd respondent is in occupation of the suit property. He shall remain in occupation pending the hearing and determination of the summons for revocation of grant. The succession proceedings before the Kangema Senior Resident Magistrate's Court

are stayed pending the hearing and determination of the summons for revocation of grant. The file in respect of the succession cause before the Kangema subordinate court shall be availed to this court for the purposes of the court to issue directions in regard to how the summons for revocation of grant shall be heard and disposed off.

It is evident from the foregoing that the applicant's application dated 24th August 2010 lacks merit and is hereby dismissed with costs. Either party shall be at liberty to list the summons for revocation of grant for directions. It is so ordered.

DATED AT NAIROBI THIS 26TH DAY OF NOVEMBER, 2010

L. KIMARU
JUDGE