



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI

Succession Cause 144 of 2001

IN THE MATTER OF THE ESTATE OF NJERU MUCHEMI (DECEASED)

ALEXANDER NJERU KAGUA.....APPLICANT

Versus

STEPHEN MUGAMBI NJERU.....RESPONDENT

RULING

The applicant **ALEXANDER NJERU KAGUA** has approached this court by summons dated 25th April 2006 and filed in court on 12th July 2006. The application seeks the following order:-

“An order of temporary injunction do issue restraining the Objector/Respondent whether by himself, his agents, servants, employees or otherwise by whomsoever in his name from damaging or destroying any trees or crop, naturally growing or cultivated on the premises known as TITLE NUMBER THEGENGE/KARIA/637 and TITLE NUMBER GITUMBA/MUHOTETU BLOCK I (MUHOTETU)/34 or from entering, remaining or otherwise howsoever from trespassing into the said premises pending the confirmation of the Grant in the cause hereof.”

The application is based on the Probate And Administration Rules 49, 59 and 73.

The Applicant is the son of the late Samuel Kagua Njeru. The said late Samuel Kagua Njeru was the son of the deceased whose Estate is the subject of this succession cause. Accordingly the Applicant is a grandson of the deceased in this succession cause. The widow of the deceased herein has also passed away. The only remaining son of the deceased is Stephen Mugambi Njeru, the Respondent herein.

It ought to be noted that a grant was issued herein on 29th August 2001 in favour of the deceased's widow, who also passed away on 17th April 2004. For all intents and purposes the Estate herein has no administrator in place.

The Applicant deponed in the affidavit in support that the Respondent has entered at various times the deceased's parcel of land, forming part of the said deceased's estate and has thereafter committed acts of waste or wanton destruction thereon. The Applicant enumerated the acts complained of against the Respondent. That on or about February 2004, November and December 2005 the Respondent cut down over 30 mature trees in the parcel of land known as **TITLE NUMBER THEGENGE/KARIA/637** without consulting the other beneficiaries. That where he cut down those trees was land which the Applicant, his siblings and his late father occupied even during the life time of the deceased. That further on or about the month of April 2004 the Respondent entered into the self same parcel of land and curved for himself ¼ acre piece of land and in the process uprooted crops that were growing thereon. That again

on or about 30th March 2006 the Respondent entered into **TITLE NUMBER GITUAMBA/MUHOTETU BLOCK I (MUHOTETU)/34** which is also part of deceased's estate and proceeded to plough thereby spoiling seeds that had been planted by the Applicant. He then proceeded to again curve out a portion of that land to himself. The Applicant annexed to the supporting affidavit photographs, one which shows a piece of land which has a fence. Annexed also to the said affidavit are correspondent by the chief and assistant chief giving notice to the Respondent to stop cutting down any more trees on the Estate land. These letters are for the period February to April 2003. Annexed also is a copy of a letter written on 4th February 2004 by the Divisional Police headquarters to the Respondent warning him to stop cutting trees.

In oral submissions Applicant's Counsel submitted that the acts of the Respondent are aimed at provoking the Applicant and his siblings to cause chaos. That if the Respondent's acts continue unchecked the Estate will suffer degradation and that therefore it is in the interest of justice that restraining orders be issued.

The application is opposed by the Respondent who filed a replying affidavit in that regard. The Respondent began by attacking the application on the basis that the Applicant is a stranger to this Estate since he has no direct interest in the Estate by virtue of being a grandson. That the Applicant in bringing this application was intermeddling in the Estate since he was not its administrator. That the Respondent even before the death of the deceased, his father, he was cultivating the Estate properties and accordingly he cannot be said to be committing acts of waste to an Estate he is entitled to half of its properties. The Respondent further stated that the photographs relied upon by the Applicant could not be relied upon since their source was unknown.

I have considered the application before court, the affidavit in reply and also counsel's submissions. I need to first tackle the Respondent's argument that the application before court is misconceived for having been brought by a party who is not an administrator of the estate. As matters stand in this Estate the one who was appointed an administrator and had a grant issued in her favour has since passed away. *Section 82* of the Law of Succession enumerates the powers of personal representatives. Amongst the powers they have is the power to enforce by "suit or otherwise, all causes of action which, by virtue of any Law, survive the deceased or arise out of his death for his estate;" That section clearly shows that it is only personal representatives who can enforce by suit the rights of deceased's estate. This, however, is a succession cause that was initiated by a petition for Letters of Administration. The administrator who was so appointed has since died. In considering the Applicant's application I would not consider it as being caught by the strict provisions of *Section 82*. *Section 45*, after all, prevents intermeddling with the deceased's Estate until distribution. What the Applicant has done is bring to the court's attention the acts allegedly being committed by the Respondent, which acts amount to intermeddling. What does the Respondent have to say in his defence? That he was in occupation of the piece of land he is utilizing, as he calls it, and cannot be stopped in so doing. The defence mounted by the Respondent is tantamount to an admission that he is interfering with the Estate's property. The Respondent essentially is telling the court that he has taken the law into his own hands. It is indeed acts such as the ones that are allegedly committed by the Respondent, which he has not denied, that result in lawlessness and chaos as correctly stated by the Applicant's counsel. The court has inherent power to make such orders as may be necessary for the ends of justice and to prevent abuse of the process of the court. The Respondent in arrogating himself power to subdivide the estate property and much worse to arrogate himself the power to cut trees that are part and parcel of the Estate land is in total abuse of the process of court. He is not the administrator of the Estate. He is a prospective beneficiary. The court is not minded to grant the wide prayers sought by the Applicant because that would amount to denying the Respondent the right to access the Estate property and that could interfere with what is already on the ground. The Respondent will and is hereby stopped from cutting any other trees or committing acts of waste in respect of the Estate property.

Before, however, concluding this ruling, the court is of the view that there is need to annul the grant previously issued to the administrator herein who has since passed away.

The orders of this court therefore are as follows:-

(1) That the Respondent **STEPHEN MUGAMBI NJERU** is hereby restrained from intermeddling, committing acts of waste or cutting down trees or other plants on the Estate properties **TITLE NO. THEGENGE/KARIA/637** and **TITLE NO. GITUAMBA/MUHOTETU BLOCK I (MUHOTETU)/34** whatsoever.

(2) That this order shall be supervised by the local Police Station near to where the above properties are situated and if acts of waste are committed by the said Stephen Mugambi Njeru the said Police Station should move as provided by *Section 45* of the Law of Succession Cap. 160 and if need be to charge the said Mr. Njeru with the offence of intermeddling with the Estate.

(3) The court does hereby annul the grant issued herein on 29th August 2001 and a fresh grant shall be issued in favour of the following in respect of this estate:-

(i) **ALEXANDER NJERU KAGUA**, and

(ii) **STEPHEN MUGAMBI NJERU**

(4) The said administrators together or individually should immediately move this court for confirmation of that grant to ensure that the beneficiaries each of them know their shares and to ensure that there is no trouble amongst those beneficiaries. In so seeking confirmation the value of the trees that have been cut down by Stephen Mugambi Njeru shall be taken into account as having been received by him.

(5) There shall be no orders as to costs.

Dated at Nyeri this 16th March 2007.

MARY KASANGO

JUDGE