



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Succession Cause 1434B of 1992

IN THE MATTER OF THE ESTATE OF MIRIAM M. KUNGU – DECEASED

RULING

The Administratrix Mariam Meli Kungu has filed a Chamber Summons dated 8th July, 2004 seeking restraining orders as specified therein against the three respondents.

It is not disputed that she is the administratrix of the estate of the deceased herein vide grant dated 4th January, 1993. Obviously the respondents herein are not the parties in this Succession Cause being brothers to the deceased herein. According to her they are collecting rents of the estate properties and she been given only Shs.9,000 from Shs.60,000 collected. Hence the application.

After filing notice of preliminary objection dated 26th January, 2006, the Respondents were directed to supply relevant documents missing in the reconstructed file i.e. proceedings and judgment in **R.M.C.C. (Milimani) 4427/01**. The Respondents were directed to disclose the rent income and manner of its distribution.

After the same were filed on 21st March, 2006 and further affidavit by the Administrator was filed on 26th April, 2006, the aforesaid Chamber Summons was fixed for hearing on 6th June, 2006 and was so heard.

Mr. Wanjama, the Learned Counsel for the Respondent addressed the court on his notice of preliminary objection filed on 1st February, 2006.

He contended that the respondents are not parties to the present cause and cannot be joined in as parties to seek restraining orders against them. They were not beneficiaries of the estate and were not served and did not object to the grant of representation and thus cannot be a part of this cause at this stage.

It is further contended that the issue raised herein is Res Judicata, because there is a Judgment in **C.M.C.C. (Milimani Commercial courts) No.4427/2001**. The case was filed by the Respondents against the Administratrix herein for declaration that the levy of distress on one Henry Kinyanjui Njoroge is unlawful and for an order of injunction from levying distress on the premises known as B-3-7 New Pumwani Estate, Nairobi.

The matter was heard and determined by Learned Senior Resident Magistrate Miss Owino. In her Judgment delivered on 3rd April, 2003 she found that the said property was held by the deceased herein in trust for his siblings and due to the serious disagreements amongst the family, the Property be put under

the management of the Public Trustee.

While deciding as above she was well aware of the existence of a confirmed grant made to the Administratrix herein (Defendant in the said case) which was issued on 2nd July, 1993.

Needless to state that the suit property in the suit property i.e. No.3/7 Pumwani was granted to the Administratrix herein vide the certificate of confirmation of a grant (*supra*).

She had remarked in her judgment and I quote:

“At this juncture, I would want to state that my (*sic*) case does not involve establishing whether letters of administration was properly obtained or not.”

These are the facts behind the application and objection made thereto.

I have very interesting facts before me where there are parallel orders of the court both of which are unchallenged by respective parties.

Before I make my finding, I must observe that only because the respondents are not parties in the succession cause before me, they cannot be heard to suggest that they are wrongly joined in as parties in the application. They are directly participating in this cause and they are the ones who are not observing the recommendation made in the judgment from which they have benefited.

The above facts also prove the observations made by the Learned Magistrate Mrs. Owino that there are serious disagreements amongst the family members which can lock them to an unpredictable direction.

Doing the best I can do, in these peculiar circumstances of the case, is to direct that pending the application for revoking of the confirmed grant dated 2nd July 1993. The Public Trustee be appointed to manage the property known as plot No.3/7 Pumwani, Nairobi.

The aforesaid application directed by me to be filed by either party in this application within sixty days from today.

Each party to bear its own costs for this application.

Dated and signed at Nairobi this 17th day of July, 2006.

K.H. RAWAL

JUDGE

17.7.06