

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Succession Cause 822 of 2001

IN THE MATTER OF ESTATE OF THE LATE NGUGI WANYINGI (DECEASED)

RULING

Before me is an application by way of Summons dated 16th September 2005 filed by Mary Wangui Ngugi who is one of the administrators in this succession cause. The application was filed on the same date, that is, 16th September 2005. It seeks for the following orders –

1. That the application for revocation of grant filed by the projector herein be dismissed.
2. That an order be issued by this court restraining the objector or his/her agents/servants from cultivating, collecting rent of rental houses in Land Parcel Loc. 11/Maragi/1572 or in any way dealing with the above parcel of land.
3. That the costs of this application be provided for.

The application has grounds on the face of the summons and is supported by the affidavit of the applicant sworn on 16th September 2005. The application is opposed and a replying affidavit sworn by GABRIEL WACHIRA on 9th December 2005 was filed.

When the application came up for hearing before me on 25/7/2006, the applicant appeared in person, while the respondent GABRIEL MAINA WACHIRA was represented by Mr. Mwaniki. Both the applicant and Mr. Mwaniki addressed me.

I have considered the application and submissions on both sides. In this administration cause, letters of administration were issued to the applicant herein MARY WANGUI NGUGI and one DANIEL MUSYOKI on 27th June 2001. The said letters of administration in the estate of the late NGUGI WANYINGI were confirmed in the name of the two administrators on 18th September 2001. Thereafter on 19th March 2003, the respondent herein GABRIEL MAINA WACHIRA filed a summons for revocation or annulment of grant, on the main ground that the applicant herein MARY WANGUI NGUGI was not a wife of the deceased, and had never been married to the deceased. That summons for annulment of grant has never been heard and determined up to today. The applicant has therefore applied for the dismissal of that summons for revocation of grant.

The applicant has argued that the respondent has not been eager to prosecute the summons for revocation of grant. That is why she has applied for the same to be dismissed. Counsel for the respondent has argued that it is in fact the applicant who is delaying the hearing of the application. The respondent has annexed copies of agreed issues (two copies) one dated 24/2/2004 and the other dated 25th February 2004. The issues dated 24/2/2004 were signed by KIROSU ONDIKI & CO advocated for the administratrix, and the issues dated 25/2/2004 were signed by MWANIKI WARIMA & Company counsel for the applicant. No explanation has been given to me as to what progress has occurred after 25/2/2004. On the face of it, it would look like no progress has taken place.

Though in my view, this court may dismiss the application for prosecution, and issue the other orders sought, I consider that in the interests of justice I have to give another chance to all the parties. In this

regard therefore, I order that the respondent should fix his application for revocation of grant for hearing by 31/10/2006, otherwise it will stand dismissed with costs to the applicant herein MARY WANGUI NGUGI. It is so ordered.

Dated and delivered at Nairobi this 27th day of September 2006.

George Dulu

Ag. Judge

In the presence of –