



Njenga v Njoroge (Being the Administrator of the Estate of Daniel Njoroge Ringiria) & another (Succession Cause 1500 of 1995) [2024] KEHC 12341 (KLR) (Family) (19 September 2024) (Ruling)

Neutral citation: [2024] KEHC 12341 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 1500 OF 1995
SN RIECHI, J
SEPTEMBER 19, 2024**

BETWEEN

PAUL NJAU NJENGA APPLICANT

AND

LEAH WANJIRU NJOROGE (BEING THE ADMINISTRATOR OF THE ESTATE OF DANIEL NJOROGE RINGIRIA) 1ST RESPONDENT

BENARD NDUNG’U GITAU (BEING THE ADMINISTRATOR OF THE ESTATE OF STEPHEN GITAU RINGIRIA) 2ND RESPONDENT

RULING

1. This Succession Cause relates to the estate of Peter Njenga Ringiria (hereafter the Deceased) who died on May 5, 1990. Following his demise the petitioners Paul Njau Njenga (applicant herein) and Hannah Wanjiku Njenga filed a petition for grant of letters of administration in respect of the deceased estate. The grant of letters of administration was issued to them on 14TH July 2003 12th November 2013 and confirmed on 8th July 2010.
2. Subsequently on 29th March 2022 the applicant herein filed this instant application dated 24th November 2021 pursuant to section 45 and 82 of [Law of succession Act](#) in which he seeks orders that;
 1. A temporary injunction restraining the Respondents (the family of the late Daniel Njoroge Ringiria and Leah wanjiku Njoroge, family of the late Bernard Ndung’u Gitau and Christopher Ngugi Gitau), their children, their agents, servants, employees and /or assignees from trading on, and or interfering with the suit property being LR no. Dagoretti/ Ruthimitu/460 in any manner inconsistent with the Applicants right of access pending the hearing and determination of this Application.



2. That this Court be pleased to issue an order of eviction against the Respondents and permanent injunction restraining the Respondents, their children and proxies, their agents, servants, employees and or assignees from trading on, claiming and or interfering in anyway with the suit property.
 3. That upon eviction the defendants, their children, proxies, agents, servants, employees, assignees or any persons claiming through them be forever/permanently restrained from re-occupying and/ or trespassing the suit properties.
 4. That the adopted son of the late Daniel Njoroge Ringiria and Leah Wanjiku Njoroge and the sons of the late Bernard Ndung'u Gitau and Christopher Ngugi Gitau, their agents, servants, employees and or assignees be permanently restrained against hurting, slandering, defaming, or harming Paul Njau in whatever manner, interfering in his personal life and property, and or issuing threats of killing him (chopping off the head of Paul Njau Njenga), and the 2nd house of the Applicant.
 5. That the Area officers in charge of Police Stations assist in enforcing the Court Order, ensure compliance and uninterrupted peace.
 6. That should the Respondents fail to vacate the suit property willingly, the OCS Kabete Police station do forcibly evict the Respondents from Land title LR no. Dagoretti/Ruthimitu/460 and put the Administrators of the estate into possession of the suit land.
 7. That the costs of this application and any other order including the cost of evicting the defendants, if they refuse to vacate freely, be provided for.
3. The application is premised on the grounds on face of it and supporting affidavit of the applicant sworn on even date.
 4. The court record and the affidavits of service indicate that the application was served upon the respondents but they did not file a response. The application therefore proceeded unopposed.
 5. The application was canvassed by way of written submissions. The applicant served written submissions dated 17th May 2022. The respondents did not file submissions.
 6. The applicant's case briefly is that the Applicant was issued with a letters of administration intestate to the deceased estate on 14th July 2013 as evidenced by a copy of the letters of administration attached to the application. The applicant stated that a certificate of confirmation of grant was issued to him on 8th July 2009 as evidenced by a copy of the certificate attached to the summons.
 7. The applicant stated further a judgement was made by this court on 8th July 2010 by Justice Roselyn Nambuye and determining the real beneficiaries of the estates of the late Peter Njenga Ringiria, the respondents are not interested parties in this cause. The applicant stated that the respondents have refused to vacate the estate even after being notified to vacate and have continued to build rental houses temporary and permanent houses and trading on the estates, with influence of a known area chief who has become partisan because they are friends, at the Petitioners expense.
 8. The applicant stated that the respondents allegedly went further to sell a piece of land in the said Dagoretti/Ruthimitu/460 to a neighbor who knew this land belonged to the late Peter Njenga Ringiria, lying that it belonged to them. the applicant stated that the respondents are very hostile and the applicants had to vacate the estate since 2012 because they were being threatened, harassed, victimized and intimidated by the respondents. The petitioners are now seeking orders for grant of mandatory injunctions.



9. The applicant submitted that they are seeking mandatory injunction orders as set out in the Court of Appeal in *Kenya Breweries Ltd and Another v Washington Okeyo* (2002) 1 EA 109 10. The respondent submitted that the respondents have severally frustrated the survey in this estate where they beat his servants and forcefully took away the bekons, ballast and cement, with the backing of the area then District officer which matter was reported to the area Deputy county commissioner and further a petition filed in court by the Applicant and the respondents and the district officer being the defendants and orders given in favor of the Applicant in this honourable court.
10. The applicant submitted that they have been forced to being tenants since they had no option but to demolish their houses to avoid further assault and victimization. The applicant submitted that even after the respondents were personally served with these matters notice of motion, the respondents did not file any response and to date they have not vacated the said estate. the applicant submitted that the respondents have disregarded the court process and have turned this cause to a gamble at the expense of the Applicant, because they are never fined.
11. The applicant submitted that as Petitioners they have undergone a lot of hardship and loss caused by the respondents and it is their prayers that they be ordered to pay costs to the Applicant. the applicant submitted that this matter has been in this court for the last 27 years. the applicant submitted that this matter has been handled by more than 10 different judges some in court of appeal today and it was always declared the respondents are not heirs to the estate of late Peter Njenga Ringiria.
12. It is the Petitioners submission that if the application to evict the respondents is not allowed the Applicants will suffer prejudice and the petitioners will be occasioned substantial loss, hardship and injury thereby suffering grave injustice. the applicant submitted the that defendants have not appealed against the said rulings and judgments.
13. From the application and submission, the main issue for determination is whether this court should grant orders sought in the application.
14. From the application the applicant is seeking temporary injunction orders against the respondents from interfering with suit property being LR.No.Dagoretti/Ruthimitu/460
15. The applicant submitted that respondent are very hostile and they have refused to vacate the estate even after being notified to vacate and have continued to build rental houses and trading on the estate at the expense of the petitioners.
16. The respondents of their part have not given justification why they are in occupation of the subject property.
17. From the evidence in record it not in dispute the applicant is one of the administrators in the deceased estate. It is also not in dispute that a letter of administration dated 14th July 2003 and Certificate of Confirmation for the grant dated 8th July 2010 were issued to the administrators in respect of the deceased estate.
18. I have perused the court record and I note that there is a judgment dated 8th July 2010 by Justice Nambuye in which main issues for determination was what properties are available for distribution as free property of the deceased and who are the rightful beneficiaries of the estate. In the said judgement Justice Nambuye delivered a ruling as follows;

“.....The free properties of the deceased subject of these proceedings which is distributable are as follows:-

a.



b. Dagoretti/Ruthimitu/460

The rightful beneficiaries of the estate of the deceased are members of the two households of the deceased namely Hannah Wanjiku Njenga (Daughter) as the sole unit in the house of Mary Mwiwaki Njenga deceased, and Hannah Wanjiku Njenga(Widow) with her children inclusive of the children of deceased daughter forming 9 units in all,that is the widow and 7 Children and grand children of the decease daughter.”

19. It is clear from the above judgement that the honourable court indentified the suit property Dagoretti/Ruthimitu/460 as property of deceased and free for distribution. The court also identified beneficiaries of the estate which include the applicants herein.

20. From the judgement the respondents herein are not beneficiaries of the deceased estate.

21. Section 82(a) of the Law of Succession Act provides that;

“Personal representatives shall, subject only to any limitation imposed by their grant, have powers 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”

22. Section 45 of Law of Succession provides:

45. No intermeddling with property of deceased person (1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, Cap. 160 Law of Succession [Rev. 2018] 20 take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person. (2) Any person who contravenes the provisions of this section shall— (a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and (b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration

23. Section 45 of the Law of Succession is to the effect that no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.

24. From the above provisions of law the court takes the view that any of the actions in dealing with the disputed property should only be by the applicants who have been appointed as administrator to the estate of the deceased and that if it is by anyone else then the same amounts to intermeddling.

25. I find that the application has raised weighty legal issues with regard to subject property interest and where such issues are raised in a succession cause, rule 41(3) of the Probate and Administration Rules provides that claims which are prima facie valid should be determined before confirmation. It states that :-

“ Where a question arises as to the identity, share or estate of any person claiming to be beneficially interested in, or of any condition or qualification attaching to, such share or estate which cannot at that stage be conveniently determined, the court may prior to confirming the grant, but subject to the provisions of section 82 of the Act, by order appropriate and set aside the particular share or estate or the property comprising it to abide the determination of the question in proceedings under Order XXXVI, rule 1 of the Civil



Procedure Rules and may thereupon, subject to the proviso to section 71 (2) of the Act, proceed to confirm the grant.”

26. In light of the evidence presented in court and the above mentioned provisions of the law, I am of the view that this court is bound to prevent wastage of the estate of the deceased. The power to do so is set out under the inherent jurisdiction of the court and under section 47 of the *Law of Succession Act* and Rule 73 of the Probate and Administration Rules. To that end, the court has power to grant injunctive orders to meet the ends of justice in a bid to preserve the estate.
27. The celebrated case of *Giella v Cassman Brown & Co. Ltd* (1973) E.A 358 sets out the grounds for granting an injunction. On the first principle as set out in the case, I am satisfied that the applicant has established a prima facie case as described in *Mrao v First American Bank & 2 others* [2003] KLR, 125. It was evident from the facts tendered in court that part of the estate of suit property form part of deceased estate and the property has been subjected to what amounts to intermeddling to estate by Respondents who are not beneficiaries.
28. I am satisfied that if the order sought by the applicants is not granted, there will be irreparable loss and I therefore grant the order as prayed in prayer 2 of the application.
29. The applicant has sought that the respondents be evicted, It is trite law that the principle that an owner of a property has the right to evict a trespasser who has refused to vacate the property (see *Harvey v. Brudges* 14M & W437) and that where such eviction is effected, the owner may also remove the property and goods of the person evicted to leave the premises empty. The applicant per certificate of confirmation of grant is not the owners of the suit property; He is an administrator and or trustees of the property on behalf of the beneficiaries. Therefore, an eviction order and a permanent injunction would jeopardize what the respondents who are yet to point out their interest in the suit property. I note there are several suits touching on the subject property that are pending before ELC Court Case number 245/2008 among others as set out by the applicant in one of his affidavits under paragraph 19 and filed in court on 30th April 2008.
30. I am of the view that granting a permanent injunction at this particular stage, when there are material facts in dispute, would tantamount to determination of the matters on affidavit evidence. The principle in this regard is that if there are triable issues the court must consider whether it will be just or convenient to refuse or allow the injunction. One such consideration is whether preserving the status quo would meet justice or convenience for the parties. Conversely, the court will consider whether maintaining the status quo will ameliorate or prevent injustice or inconvenience (*Siskina (Cargo Owners) v Distos Compania Naviera SA, The Siskina* [1977]3 All E.R.803.
31. The other consideration is whether denying or granting the injunction may finally dispose of the matter. In the words of Lord Diplock in *N.W.L. Ltd v Woods* [1979] 1294, 1307, it is stated:

" Where, however, the grant or refusal of the interlocutory injunction will have the practical effect of putting an end to the action because the harm that will have been already caused to the losing party by its grant or its refusal is complete and of kind for which money cannot constitute any worthwhile recompense, the degree of likelihood that the applicant would have succeed in establishing his right to injunction if the action had gone to trial, is a factor to be brought into the balance by the judge in weighing the risks that injustice may result from his deciding the application one way rather than the other”.
32. In respect of prayers on eviction and permanent injunction, I decline to grant a permanent injunction as well as an eviction order against the respondents and direct that the status quo on the suit property is



maintained under terms that the Status quo be maintained pending determination of the suits pending in various court touching on the subject property, the respondents must not undertake any further developments on the suit property and must not admit any other tenants on the premises. That status quo must have a timeline and must be conditional so as to prevent abuse of the court process. I therefore make the following orders: -

- i. A temporary injunction order be and is hereby issued against the respondents, their agents, servants or any person acting under their authority restraining them from any further intermeddling or dealing in any manner with the subject property being. LR. No. Dagoretti/Ruthimitu/460
- ii. A status quo order is issued in the terms that pending determination of the other suit relating LR. No. Dagoretti/Ruthimitu/460 respondents, continues to be on land parcel LR. No. Dagoretti/Ruthimitu/460, but must not undertake any further developments, must not admit any other tenants on the said land parcel.
- iii. The respondent to give an account of proceeds forming part of the Deceased's estate being from LR. No. Dagoretti/Ruthimitu/460 Machakos/Kiandani/459 within 30 days from the date hereof.
- iv. That in the alternative, the court hereby directs that the proceeds forming part of the Deceased's estate being from LR. No. Dagoretti/Ruthimitu/460 be deposited in court within 30 days from the date hereof pending the hearing and determination of the other suits relating to LR. No. Dagoretti/Ruthimitu/460
- v. The part of estate being LR. No. Dagoretti/Ruthimitu/460 that is in occupation by the respondents and contested herein shall be preserved to await the conclusion of any other case touching on LR. No. Dagoretti/Ruthimitu/460. All the pending suits relating to LR. No. Dagoretti/Ruthimitu/460 be prosecuted and concluded with the next 3 months days failure to which the eviction order shall issue.
- vi. The matter shall be mentioned within 60 days from the date hereof to confirm compliance.
- ix. Each party to bear their own costs.

DATED AT NAIROBI THIS 19TH DAY OF SEPTEMBER, 2024.

S. N. RIECHI

JUDGE

