



REPUBLIC OF KENYA



**In re Estate of Gerishon Kamau Kirima (Deceased) (Succession Cause
1298 of 2011) [2024] KEHC 13013 (KLR) (Family) (18 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13013 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 1298 OF 2011
PM NYAUNDI, J
OCTOBER 18, 2024**

RULING

1. This ruling limits itself to whether the Court should grant interim orders in terms of prayer 2 of Application dated 16th September 2024 filed by Teresia Wairimu Kirima (the Administrator/Applicant) in which she seeks the following orders;
 1. Spent.
 2. That the orders that the Deputy Registrar to execute documents where joint Administratrix Teresia Kirma (sic) fails to sign be suspended pending the hearing and determination of the Application
 3. That order that the Deputy Registrar to execute documents where joint administratrix Teresia Wairimu Kirima fails to sign be lifted and or be set aside.
 4. The Management and the letting contract executed between Legent (sic) Management (on the one part) and Anne Wangari Kirima and Deputy Registrar (on the second part) be terminated and/or declared null and void.
 5. That costs of this application be provided for.
2. The Application is brought pursuant to Section 82 &83 of the *Law of Succession Act*, Cap 160, Rules 59 (5), 61,62,72 and 73 of the Probate and Administration Rules and was supported by a sworn affidavit by the Applicant of even date.
3. The Applicant seeks to set aside the orders issued on 8th December 2020 that allow the Deputy Registrar to execute documents on behalf of Teresia Wairimu Kirima (Co- Administrator) be set aside. The basis of the Application is that the Deputy Registrar is acting ultra vires the order and has in effect replaced Teresia Wairimu as Administrator.



4. According to her, the office of the Deputy Registrar is being used to execute decisions made solely by her co administrator Anne Kirima. She argues that the Deputy Registrar has been dragged to sale transactions in respect to properties known as L.R No. 5908/8 and 6825/2. On 26th January 2024, Anne Kirima manipulated the Deputy Registrar to execute a management and letting contract she unilaterally negotiated based on an order that had remained unenforced for 12 years. There was need for due diligence on the company.
5. Clause 5 of the contract provided that 5% of the rent collected monthly was to be paid to the agent. On 15th August 2024, the firm of MMC Asafo who represent Anne Wangari Kirima forwarded to her advocates bank instructions to pay Legend Estate Agent Kshs. 400,000 as monthly deposit not based on any rent collected. She protested against the instructions by writing a letter dated 20th August 2024 to MMC Asafo and the Deputy Registrar. However, the Deputy Registrar proceeded to sign the instructions to pay the agents Kshs. 400,000. According to her, the management company does not collect rent or manage the estate. The management company is a ploy designed to siphon funds from the estate of the deceased.
6. She further argued that Anne Wangari Kirima cannot execute documents generated by her. That the activities of Anne Wangari Kirima and the Deputy Registrar are meant to sideline her on matters administration of the estate. She argued that it is in the interest of preservation and protection of the estate the orders sought should be granted.

Oral Submissions

7. Counsel for the Applicant argued that the conduct of the Deputy Registrar is prejudicial to the estate of the deceased. He accused the Deputy Registrar of signing a payment to the estate agent which is contrary to the contract and signing an agreement with the estate agent despite her client's protest. That the Kshs. 400,000 paid to the agent was without basis and the same has not been justified. The Deputy Registrar has been signing cheques in relation to sale of parcels of land at Njiru. She has replaced the role of Teresia Kirima as an administrator. He asked the court to suspend the orders allowing the Deputy Registrar to execute documents or in the alternative, another Deputy Registrar other than Hon. Catherine Nganga do handle the matter.
8. Counsel for the Respondent told the court that there is no evidence that the Deputy Registrar has been compromised. According to him, there is sufficient justification why the orders were granted; the orders were issued because Teresia Kirima does not sign any documents. He told the court that the firm of Kaplan Stratton is in charge of the transactions relating to the Njiru property.

Analysis And Determination.

1. At this stage I am required to determine whether I should grant interim orders to suspend consent order issued on 8th December 2020. The conditions required for the Court to grant an interlocutory injunction had previously been settled and well-articulated in the landmark case of *Giella v Cassman Brown & Co. Ltd* (1973) EA 358. The three-part test is therefore that:
 - a. An Applicant must show a prima facie case with a probability of success;
 - b. An interlocutory injunction will not normally be granted unless the Applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages;



- c. If the Court is in doubt of the two above principles, it will decide an application on the balance of convenience.
9. The Court of Appeal in the case of Nguruman Limited –v- Jan Bonde Nielsen & 2 others [2014] eKLR further stated that
- “...these are the three pillars on which rest the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially... if the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted will be irreparable. In other words, if damages recoverable in law are an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant’s claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration.”
10. Applying this test to the facts as presented I am not persuaded that I should grant the interim orders as sought. The Applicant has not laid the basis for varying of a consent order, further it has not been demonstrated that the harm suffered will be irreparable and finally the balance of convenience definitely weighs against ordering a blanket freezing of the running of the estate.
11. Accordingly, interim orders are declined. The Application dated September 16, 2024 will be canvassed via written submissions. I note that the Respondent has filed her replying affidavit. The Applicant is granted leave to file further affidavit within 7 days. The Applicant will file and serve submissions within 7 days. The respondent will file submissions within 7 days of service. Ruling herein will be delivered on 29th November 2024 at 8:30 am.

DELIVERED ON THE VIRTUAL PLATFORM, DATED AND SIGNED AT NAIROBI THIS 18th DAY OF OCTOBER, 2024.

PATRICIA NYAUNDI

JUDGE

In the presence of:

Court Assistant Fardosa

