



REPUBLIC OF KENYA



KENYA LAW

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**Ngugi v Mukuria (Succession Appeal 4A of 2017)
[2024] KEHC 14069 (KLR) (12 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14069 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
SUCCESSION APPEAL 4A OF 2017**

J WAKIAGA, J

NOVEMBER 12, 2024

BETWEEN

DANSON NJIRAINI NGUGI APPELLANT

AND

NJAMBI NDUNGU MUKURIA RESPONDENT

RULING

1. By summons dated 4th April 2017, the Applicant under certificate of urgency moved the Court for the following orders:
 - a. That the Respondents be restrained by an injunction from sub-dividing, partitioning or in any other way or manner whatsoever interfering with suit land parcel No. LOC.17/ Kamahuhia/149 until such time as this appeal is heard and determined.
 - b. That the status que of the title of the suit land be maintained and preserved until this appeal is heard and determined
 - c. That the cost be provided for.
2. The application was supported by an annexed affidavit sworn by the Applicant in which it was deposed that the Respondent had already filed summons for the Executive Officer of the Court to execute documents to facilitate the distribution of the estate as per the judgement while the appeal was yet to be determined.
3. That should the subject land be sub divided and apportioned, the appeal will be rendered nugatory and the same compromised, hence the need for injunction or the maintenance of status que until the appeal is heard and determined.
4. In the meantime, the Respondent on the 12th day of April 2017 filed a replying affidavit and an application that the appeal be struck out for being scandalous, vexatious and abuse of the process of



Court on the grounds that the Appellant was a busy body with no locus stand to file the appeal as he had no interest on the estate herein.

5. In response to the application by the Appellant it was deposed by the Respondent's Advocate on record Mr. T.M. Njoroge that the Appellant had indicated in the lower Court that he did not have any interest in then estate and that his appointment as the Administrator was a big mistake and therefore the application dated 4th April 2017 was vexatious and scandalous.
6. It was contended that the Applicant was neither a survivor nor a dependant of the estate under the meaning of Section 29 of the Act and therefore the application was without merit as there was no loss to be suffered by the Applicant within the meaning of *Giela v Casman Brown*.
7. On the Respondent's application, it was stated that the appeal had no legal stratum and that the appeal was only calculated to delay the winding up of the estate of the deceased which should not be allowed.
8. The Appellant filed a Supplementary Affidavit in which it was deposed that he was appointed by the beneficiaries as the Administrator when they failed to agree on one and that in the said capacity he has locus standi to file the application under the provisions of Rule 73 of the Probate and Administration Rules for injunction.

Submissions

9. On behalf of the Appellant, it was submitted that on the 12th April 2017, the Court gave orders of stay of execution of the certificate of confirmation of grant issued on 2nd March 2017 until further orders. It was contended that the Appellant was seeking orders for the preservation of the estate pending the determination of the appeal as provided for under Rule 73 of the Probate and Administration rules since the Respondent have applied for the execution of the transmission documents by the Executive Officer, it was contended that the application should be allowed.
10. It was further submitted that the Respondents application dated 11th April 2017 in which the same seek that the appeal should be struck out is opposed based on the Court's decisions in *Co-operative Bank Ltd v George Fredrick Wekesa* where the Court held that striking out of pleadings should only be resorted to in plain cases where there is no semblance of defence or cause of action. It was submitted that the Appellant has a right of appeal, which does not amount to an abuse of the Court process.
11. On behalf of the Respondent, it was submitted that the Appellant has no locus to bring the appeal since he has no right in the estate as he is neither a dependant nor survivor of the estate.

Determination

12. It is not disputed that the Appellant herein preferred an appeal to this Court against the determination of the trial Court Ruling dated 24th April 2017 which appeal is still depending for determination by this Court some seven years since the same was filed in this Court having been transferred from Nyeri. The issue as to whether the Appellant has locus standi will be the subject of the appeal herein and can not be aground for striking out the appeal.
13. From the file herein, I have noted that the record of appeal was filed on 11th April 2017 and that the appeal had not been admitted for determination and no directions issued thereon. It is therefore clear that the Respondent's application dated 11th April 2017 is not merited and is dismissed with cost being in the cause.
14. On the application for stay, I note that on 12th April 2017, this Court (Waweru J) granted stay of execution of certificate of Confirmation of Grant until further orders, which order has not been set



aside or reviewed. From the reading of the order it is clear that the same was final pending further orders. The Respondent unless allowed by the Court could not move the lower Court by way of an application for execution of the transmission documents. The said order is therefore confirmed pending the hearing and determination of the appeal herein.

15. Having noted the age of this matter, I hereby make the following directions thereon:
- a. The appeal is admitted for hearing by way of written submissions.
 - b. The Appellant to file and serve written submissions within the next 14 days from the date herein.
 - c. The Respondent to file and serve written submissions within the next 14 days from the date of service of written submissions.
 - d. The matter to be mentioned before the Deputy Registrar of this Court on 18th December 2024 for purposes of fixing a date for the highlighting of the submission.
16. The cost of the applications herein shall be in the cause and it is ordered.

DATED, SIGNED AND DELIVERED AT MURANGA THIS 12TH DAY OF NOVEMBER 2024

J. WAKIAGA

JUDGE

In the presence of

Mr. T.M. Njoroge for the Respondent

Ms Kimani for the Applicant

Jackline – Court Assistant

