



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 3098 OF 2007 &

SUCCESSION CAUSE NO. 1372 OF 2013

IN THE MATTER OF THE ESTATE OF JULIA WAITHIRA KARATU (DECEASED)

RULING

1. Before this Court for determination is the Notice of Motion Application dated **10th December 2020** by which the Applicants **MARY WANGARI KIMEMIA** and **MARGARET NJERI KAMAU** seek the following orders:-

1. SPENT

2. SPENT

3. THAT pending the hearing and determination of this suit, the Respondent, his associates, servants, agents and or anyone acting under him be restrained by an order of this Court from uprooting tea bushes, trees and or destroying the same and or interfering with the Applicants peaceful possession and occupation of Land Title Loc. 2/Kangari/2886 by uprooting plants thereon and or putting up boundaries and or demarcating the same whatsoever and or framing up malicious complaints and Summons through the Police against the Applicants/Objectors.

4. THAT the Notice to compel attendance at Police Station under Section 52(1) of the National Police Service Act 2011 issued by PC Silas Saha of Kangari Police Station dated 7/12/2020 against one of the Applicants, Mary Wangari Kimemia and instigated by the Respondent be declared unlawful, illegal, null and void immediately.

2. The Application was premised upon the grounds on the face of the same and was supported by the Affidavit of even date sworn by the 1st Applicant **Mary Wangari Kimemia**.

3. The Respondent **Joseph Ng'ang'a Muiruri** filed Grounds of Opposition dated **25th January 2021** objecting to the Application on grounds that:-

“(i) The application is an abuse of the Court process.

(ii) The application is an illegal attempt to appeal the orders issued in Succession Case No. 309 of 2007 where the Applicants' illegal grant was cancelled.

(iii) In the earlier grant where they had derived their illegal title it was also cancelled and title reverted to the estate where the Respondent is the administrator and the title L.R. No. Loc. 2/Kangari/2886 ceased to exist.

(iv) The application is bad in law and malicious.

(v) The application is a waste of Court's time.

(vi) The application is made without disclosing the actual and material facts to the Court of the previous cause Succ. 3098 of 2007 Nairobi.

(vii) The Applicant is guilty to disclose the existence of another cause relating to the same estate hence obtaining orders through the back door.”

4. The Respondent also filed a Replying Affidavit dated **26th January 2021** as well as a Reply to the Affidavits of Protests filed by the Applicants. The Application was canvassed by way of written submissions. The Applicants filed their written submissions dated **12th April 2021** whilst the Respondent relied upon his written submissions dated **15th April 2021**.

BACKGROUND

5. This Succession Cause revolves around the estate of **JULIA WAITHIRA KARATU** (hereinafter '**the Deceased**') who died intestate on **12th May 1999**. At the time of her death the deceased was unmarried and had no children.

6. Vide **Succession Cause No. 3098 of 2007**, the Applicants herein presented themselves as cousins to the Deceased. They relied on a letter dated **17th May 2007** written by one **Ephantus M. Gichimu**, Ag. Chief of **Kangari Location** in which letter the Applicants were described as the '**rightful heirs**' to succeed the Deceased. On the basis of this letter the Applicants on **30th July 2012** petitioned the Court for Grant of Letters of Administration to the estate of the Deceased. A grant was duly issued to the two on **6th March 2008** which Grant was confirmed on **30th July 2012**.

7. Upon being issued with the Confirmed Grant the Applicants agreed that the sole asset of the Deceaseds estate being the parcel of land known as **L.R. Loc. 2/Kangari/2886** would be divided into two whereby **Mary Wangari Kimemia** (1st Applicant) would get **0.4 hectares** and **Margaret Njeri Kamau** (2nd Applicant) would get **0.2 hectares**. The said Agreement on the mode of distribution of the estate was effected and the sub-divisions were carried out.

8. On **30th May 2016** the Respondent **Joseph Ng'ang'a** who was a nephew to the Deceased filed a Summons seeking the revocation of the Grant which had been issued to the Applicants. By her Ruling dated **11th June 2020** **Hon. Lady Justice Ali-Aroni** revoked the Grant that had earlier been issued to the Applicants and directed the Land Registrar **Murang'a** to cancel subdivisions **Loc 2/Kangari/4784** and **Loc 2/Kangari/4785** and to restore the original **Title being Loc. 2/Kangari/2886** to the name of the original owner **Julia Waithira Karatu** (the Deceased).

9. For clarity the orders made by **Hon. Ali-Aroni** in her Ruling of **11th June 2020** were as follows:-

1. THAT the Grant issued on 6th March 2018 and confirmed on 30th July 2012 be and is hereby revoked.

2. THAT the Registrar Murang'a will cancel/subdivisions Loc. 2/Kangari/4784 and Loc. 2/Kangari/4785 and restore the original Title Loc. 2/Kangari/2886 to the name of the original owner Julia Waithira Karatu deceased pending further order of the Court.

3. THAT Joseph Ng'ang'a Muiruri as appointed in Succession Cause NO. 1372 of 2013 will remain t he administrator of the estate of Julia Waithira Karatu.

4. THAT costs to the Applicant.

10. The Respondent **Joseph Ng'ang'a Muiruri** then petitioned for Grant of Letters of Administration to the estate of the Deceased vide this cause being **Succession Cause No. 1372 of 2013**. The Respondent was appointed as Administrator of the Deceased's estate in **Succession Cause No. 1372 of 2013**.

11. The Respondent then filed a Summons dated **21st July 2020** seeking to have the Grant which had been issued to himself on **30th July 2013** confirmed. The 1st Applicant filed an undated Affidavit of Protest claiming to be a Creditor to the estate of the Deceased. The Applicants aver that the Respondent has twice invaded the suit land with hired gang uprooted their tea and destroyed property all in an attempt to evict them therefrom. The Applicants then filed this present application seeking interim interlocutory orders to restrain the Respondent from interfering with their possession, use and occupation of the suit land pending the hearing and determination of the suit.

12. The Respondents position is that the present application is nothing more than an illegal attempt to appeal the orders made by **Justice Ali-Aroni** in **Succession Cause No. 3098 of 2007**. That the Grant issued to the Applicants was revoked and the Title in the suit land reverted back to the name of the Deceased thus the Applicants cannot claim any interest in said land. The Respondent avers that this present application is an abuse of the Court process and ought to be dismissed as such.

ANALYSIS AND DETERMIANTION

13. I have carefully considered the Application before me, the Replying Affidavit filed by the Respondent as well as the written submissions filed by both parties. The only issue for determination is whether the interlocutory orders being sought by the Applicants are merited.

14. In order to merit the orders they seek the Applicants must satisfy the conditions for grant of interlocutory injunctions as set out in the celebrated case of **GIELLA –VS- CASMAN BROWN & CO. [1973]E.A** as follows:-

i. That they have a prima facie case with a probability of success.

ii. That they are likely to suffer irreparable loss or damage should the relief being sought not be granted.

iii. In case of any doubt the balance of convenience should tilt in favour of the Applicant.

15. The Record is clear that although the Applicants initially obtained a Confirmed Grant in respect of the estate of the Deceased in **Succession Cause No. 3098 of 2007**, that Grant was later annulled / revoked by the High Court vide the Ruling delivered on **11th June 2020** in **Succession Cause NO. 1372 of 2013**. The Applicants have not appealed against the Ruling of **11th June 2020**. Therefore as things stand the Applicants have **no** interest at all in the estate of the Deceased.

16. Despite the Applicants initially having presented themselves as cousins to the Deceased, they later conceded that they were **not** infact relatives of the Deceased but were merely persons who claimed to have purchased the suit land from the Deceased. On the other hand the Respondent is the Court appointed Administrator of the estate of the Deceased being the holder of Letters of Administration issued to him on **30th July 2013**.

17. **Section 45** of the **Law of Succession Act, Cap 160, Laws of Kenya** provides as follows:-

"45. (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, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased.

(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."

18. **Section 45** therefore specifically outlaws the '**intermeddling**' with an estate by a person who has no legal authority to handle and / or deal with the property of said estate. By virtue of his position as the legal Administrator of the estate of the Deceased all the property / assets of that estate vest in the Respondent. This is in line with **Section 79** of the **Law of Succession Act** which provides that:-

***"The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of that grant, and subject to any limitation imposed by the grant, all the property of the deceased shall vest in him as personal representative"**.*

19. The parcel of land in respect of which the Applicants are seeking interlocutory orders being **L.R No. Loc. 2/Kangari/2886** forms part of the estate of the Deceased. As such the suit land vests in the Respondent as personal representative of the estate of the Deceased. The Respondent is at liberty to handle and / or deal with the said property in any manner he deems fit. He does not require the authority or permission of the Applicants to deal with the suit property. The only limitation upon the Respondent in the manner he deals with said property is that provided by **Section 82(b) (ii)** of the **Law of Succession Act** which prevents him from selling any immovable property until the Grant issued to him has been confirmed.

20. In her Ruling **Hon. Justice Ali-Aroni** found that the Applicants obtained a Grant to the estate of the Deceased by misleading the Court and posing as cousins of the Deceased. The Grant which had been issued to the Applicants was revoked and title in the suit land reverted to the name of the Deceased. The Applicants are **not** beneficiaries to the estate of the Deceased. As things now stand the Applicants are best described as "**intermeddlers**" in the estate. They have no legal claim to the estate or to the suit land. In the circumstances I find that the Applicants have failed to show a prima facie case with a probability of success. It is trite law that where a prima facie case **has not** been established the Court need not go on to consider the other limits of irreparable harm or balance of convenience.

21. Based on the foregoing I find no merit in this application. The same is dismissed in its entirety. The Applicants will meet the costs for the Application.

DATED IN NAIROBI THIS 11TH DAY OF JUNE 2021.

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MAUREEN A. ODERO

JUDGE