



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 637 OF 2016

IN THE MATTER OF THE ESTATE OF HIRAM CHEGE NGARUIYA

RULING

Under consideration are two applications: Summons dated 19th April 2021 brought under Section 35 (3) of the Law of Succession Act brought by Eric Muriga Chege and Chamber Summons brought under various provisions of the law dated 6th May 2021 by Ruth Mugure Ngaruiya. Directions were taken on 16th June 2021 to the effect that both applications be canvassed by way of written submissions with the option of highlighting the submissions if this becomes necessary. Parties were allowed time to file their respective submissions and a mention date to confirm compliance with those directions given for 12th July 2021. After these directions were given Mr. Githaiga, learned counsel for the applicant in the Summons dated 6th May 2021, moved the court in respect of prayers 3 and 4 of that Summons seeking interim prayers pending the hearing and determination of the two applications.

Prayers 3 and 4 of the Summons dated 6th May 2021 are framed as follows:

3. That pending the hearing and determination of the Application, a temporary injunction does issue, restraining Eric Muriga Chege and Winfred Ngaruiya Chege by themselves and/or through their servants, agents, employees, proxies, wife or wives, husband or husbands, children or otherwise howsoever, from accessing, selling, alienating, altering, transferring, charging, disposing of, pledging, offering for sale or howsoever, dealing or handling any and all of the assets of the Estate and from further alienation and all access.

4. That pending the hearing of this application, the officers commanding the respective police divisions in the areas where the assets and properties contained in the Certificate of Confirmation of Grant dated 26th February 2018 and all other assets as may have come forth from the estate, do assist in the enforcement of the orders herein.

Mr. Githaiga submitted that his client is the sole Administratrix of the Estate; that she is in danger and living in fear; that Eric Muriga Chege is threatening her; that Eric Muriga Chege is occupying a house meant to bring in rental income and orders are required to protect the administratrix pending hearing and determination of the application.

The move by Mr. Githaiga was opposed by Mr. Kariuki, learned counsel for the Applicant in Summons dated 19th April 2021. He submitted that Mr. Githaiga was going into the merits of the application; that there are no police reports in regard to the threats to the administratrix; that the orders sought on prayers 3 and 4 of the Summons dated 6th May 2021 are meant to restrain persons named in that application some of who have not before the court and that the issues raised in those prayers go to the core of the matters under dispute in respect of the Estate and that Eric Murigu Chege will be rendered homeless. He further submitted that he is yet to respond to the issues raised in that application.

I have considered this matter. Temporary injunctions are provided for **under Order 40 (1) of the Civil Procedure Rules**. This Rule is one of the Rules of Civil Procedure Rules imported into the Law of Succession Act by dint of Rule 63 of Probate and Administration Rules. **Order 40 (1) Civil Procedure Rules** provides as follows:

“1. Where in any suit it is proved by affidavit or otherwise—

(a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or

(b) that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

The court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the

disposal of the suit or until further orders.”

I have considered this matter. I have noted that while Eric Murigu Chege was represented by Mr. Kariuki, Winfred Ngaruiya Chege was not represented. Indeed this issue was raised by Mr. Kariuki who told the court that the orders being sought affect her and yet she is not in court. Mr. Githaiga told the court that he had served Winfred by email but was yet to file an Affidavit of service.

In seeking temporary injunction, it is upon the Applicant to satisfy the court that she has a prima facie case with chances of success and that she is likely to suffer irreparable loss which may not be compensated by an award of damages. These are the principles in granting temporary injunctions. Where the court is in doubt in respect of the two principles then it must decide the case on a balance of convenience. While I note that the Applicant is the administrator of this estate and therefore she has a prima facie case with chances of success, she has not satisfied this court that she is likely to suffer irreparable loss. The Applicant has not shown evidence that the Respondent and Winfred have threatened her life and that she is living in fear. Secondly, all parties involved in this matter have not been heard. The danger in granting the prayers sought at this stage is that the parties who are not in court may be condemned unheard. Secondly the issues raised are weighty and are better resolved by hearing all the parties involved.

I have also noted that the Applicant has not specified which assets of the estate are allegedly being or are likely to be interfered with. The prayers sought are ambiguous in that it is not possible for this court to know which assets the Applicant is referring to. If this court were to grant prayer 4, for instance, it would impossible to know which assets the police are required to protect. It is my view that the issues raised by the Applicant be canvassed substantially in order for a determination that captures the views of everyone involved in this succession dispute.

It is my considered view that the Applicant has not satisfied this court that she deserves the prayers sought. She has not met the threshold for issuance of temporary injunction. I have no doubt that she may be aggrieved. However at this stage and before hearing the matter substantially this court may condemn unheard the other parties who were not present in court. For this reason the application to grant interim orders in respect of prayers 3 and 4 in the Chamber Summons dated 6th May 2021 is hereby declined.

As stated above, directions have been given in this matter. I urge parties to wait until every party is heard before this court can deliver a comprehensive ruling on the issues raised. Orders shall issue accordingly. Costs shall be in the cause.

DATED, SIGNED AND DELIVERED THIS 12TH DAY OF JULY 2021.

S. N. MUTUKU

JUDGE