



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION CAUSE NO. 290 OF 2020

IN THE MATTER OF THE ESTATE OF CYRUS DICKSON MWANGI (DECEASED)

CHARITY WANGUI MWANGI1ST ADMINISTRATOR

ALFRED NDANI MWANGI.....2ND ADMINISTRATOR

JANET JAEL WANJIRU MWANGI3RD ADMINISTRATOR

VERSUS

PRISCILLAH WANJUKU1ST OBJECTOR

WACHIRA K MWANGI.....2ND OBJECTOR

RULING

1. Before the court is the chamber summons dated 11th May 2021 by which CHARITY WANGUI MWANGI (the 1st Applicant), ALFRED NDANI MWANGI, the 2nd Applicant and JANET JAEL WANJIRU MWANGI, the 3rd Applicant (all suing as administrators of the Estate of CYRUS DICKSON MWANGI), seek the following orders: -

“1. SPENT

2. SPENT

3. THAT a temporary injunction order do issue restraining

PRISCILLAH WANJIKU and WACHIRA K. MWANGI, their agents and or servants howsoever from entering, alienating, managing, disposing or otherwise intermeddling and interfering with the operations and the management of the properties listed in 2 above pending the hearing and determination of this suit.

4. THAT the respondents do deposit all ownership documents of the deceased with the court for purposes of safe custody pending hearing and determination of this application.

5. THAT a neutral real estate agent be appointed to collect rent and the rental proceeds of all properties be deposited in an account to be held jointly by the advocates of the applicants and advocates of the respondents pending the hearing and determination of this suit.

6. THAT the respondents do render a true and accurate account of the proceeds of the rental property collected from 17th March 2020 to date.

7. THAT the 1st respondent do refund to the estate of the deceased a sum of Kshs 5,900,000/- withdrawn from the deceased's ABSA Bank Account Number 204***** on 15th April, 2020 and 20th July 2020.

8. THAT costs of the application be provided for.

2. The application was premised upon **section 45 of the law of Succession Act. Rules 63 and 73 of the Probate and Administration Rules. Order 40 Rules 1, 2, 63 of the Civil Procedure Rules and Section 1A and 1B of the Civil Procedure Act, Cap 21 Laws of Kenya** and all other enabling provisions of Law and was supported by the Affidavit of even date and the supplementary affidavit dated **11th June 2021** date/sworn by the 1st Applicant.

3. The Respondents opposed the application. The 1st Respondent **PRISCILLA WANJUKU MWANGI** and the 2nd Respondent **WACHIRA KIMANYA MWANGI** both filed Replying affidavits dated **7th June 2021**. The application was canvassed by way of written submissions. The Applicant filed written submissions dated **7th July 2021** whilst the Respondents relied upon their written submissions dated **14th July 2021**.

BACKGROUND

4. This succession cause relates to the estate of one **CYRUS DICKSON MWANGI** (hereinafter the Deceased) who died at the **Mater Hospital on 16th March 2020**. Following the demise of the Deceased the three Applicants as wife and children of the Deceased petitioned the High Court for Grant of letters of Administration Interstate vide their Petition dated **23rd April 2020**. On **8th September 2020**, the applicants were jointly issued with Grants of Letters of Administration intestate in respect of the estate of the Deceased.

5. The 1st Objector who claims to be a wife of the Deceased having lived with the Deceased for **46 years** immediately prior to his death and the 2nd Objector who states that he is a son to the Deceased both filed a summons dated **29th April 2021** seeking Revocation of the Grant issued to the Applicants. That summons for revocation of Grant is yet to be heard.

6. The Respondents assert that the Deceased did not die intestate.

That the deceased left a written will dated **27th April 1999**. A copy of said Will is annexed to the Replying affidavit of the 1st Respondent. That vide the said Will the Deceased appointed his son **Mainigi Kimanya Mwangi** and the 2nd Respondent as Executors.

7. The Applicants stated that the Deceased left a vast estate from which the Respondents have been collecting rent and generally managing the estate to the exclusion of the other beneficiaries of the estate. They allege that the respondents have intentions of disposing of some of the estate properties in **Nyeri** and have made visits to the said properties with potential buyers and that the 1st Respondent in April and **July 2020** made withdrawals amounting to **Kshs 5,900,000/-** from the Deceased's **ABSA Bank Account No.xxxxxxxxxxx**.

8. The 1st Applicant submits that unless the Respondents are restrained by the court, she stands to be suffer irreparable harm as she had no means of livelihood and the estate stands to be whittled away.

9. In opposing the Application for injunctive orders the Respondent retorts that the Applicants obtained the Grant fraudulently through misrepresentation and concealment of material facts. That the Applicants deliberately withheld from the court the fact that there were other beneficiaries to the Estate of the Deceased.

10. In her replying affidavit dated **7th June 2021** the 1st Respondent avers that she got married to the Deceased under **Kikuyu Customary Law** on **25th September 1974** and that their union was blessed with three children. It is further averred that the Deceased left a written Will dated **27th April 1999** which Will appointed executors. The 1st Respondent insists that she and the Deceased together acquired the properties which made up the Estate. That the 2nd Respondent as the Executor named in the Will has a statutory duty under the **Law of Succession** to collect and gather the estate of the Deceased. It is the alleged that the Deceased and the 1st Applicant were divorced and that the Applicant had instituted separation proceedings vide **Nairobi Separation Cause No. 57 of 1997**.

11. In her replying affidavit the 2nd Respondent states that he currently resides in plots **1729** and **1730 Dandora** which belong to the Deceased and that he as an Executor has all along been managing the property of the Deceased. He states that the Deceased in his Will dated **27th April 1999** categorically declared that neither the 1st Applicant nor her children were to inherit from her estate. The Respondents urge the court to dismiss this application seeking injunctive orders.

Analysis and determination.

12. I have carefully considered the application filed by the Applicants, the Affidavits in reply as well as the written submissions filed by both parties. The Applicants are seeking interim injunctive orders to preserve the property comprising the estate of the Deceased pending the hearing and determination of the suit. The grounds upon which an interim injunction may be awarded by the court were set out in the case of **GIELLA VS CASSMAN BROWN [1973] E.A.** as follows: -

(a) **The Plaintiff must establish he has a *prima facie* case with a high probability of success.**

(b) **The Plaintiff must show that he is likely to suffer irreparable loss that cannot be adequately compensated by an award of damages in the event the compensation is not granted.**

(c) **If in any doubt the court will decide the case on a balance of probability.**

13. In order to merit the injunctive orders they seek the Applicants must demonstrate that they have a *prima facie* case with a probability of success. The Applicants currently have letters of administration intestate in respect of the estate of the Deceased. However, that Grant is

challenged by the Respondents on the basis that the same was obtained fraudulently.

14. At this point, the court is not required to determine the veracity of the allegations being made by the Respondents. The question of whether or not the Grant was properly issued to the Applicants can only be determined at a full hearing where parties will be allowed to call evidence and to cross-examine witnesses.

15. Suffice to say that at the point there are two women claiming to be the legal wives of the Deceased and each claims the right to administer the Estate. Further, there appears to be credible evidence that the Deceased left a written will in which the 2nd Respondent is named as Executor. I repeat that these are matters that cannot be determined at this interim stage on the basis of Affidavit evidence.

16. However, in light of the assertions being made by the Respondents this court cannot conclude that the Applicants have sole rights to the estate of the Deceased. Therefore, I find that the Applicants have failed to show a *prima facie* case.

17. The Rule in the **Giella – vs- Cassman Brown** case requires that the Applicants demonstrate to the court that they are likely to suffer irreparable harm in the event the orders being sought are not granted. The Applicants have not demonstrated that they were controlling, managing and benefiting directly from the assets comprising the estate during the lifetime of the Deceased. The Applicants cannot claim irreparable harm on account of assets which they have never controlled, managed and/or benefited from. On this limb of irreparable harm the Applicants claim falters.

18. All in all I am not persuaded that the interim orders now being sought are merited. Having said that I am persuaded that the estate of the Deceased ought to be preserved pending full hearing and determination of the objection filed by the Respondents. In regard, I hereby make the following orders: -

- 1) **The current status quo in respect to the management of the estate of the Deceased shall prevail.**
- 2) **In order to protect and preserve the estate of the Deceased all parties the Applicant as well as the Respondents are restrained from whether by themselves or by their servants, agents employees and/or anyone acting on their authority from alienating, selling, leasing, charging, disposing or in any other manner whatsoever interfering with the Deceased's property pending the hearing and determination of this succession cause.**
- 3) **The summons for Revocation of Grant to be heard on priority basis by way of *viva voce* evidence.**
- 4) **Each party to meet their own costs.**

Dated in **Nairobi** this 1st day of **October 2021**.

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MAUREEN A. ODERO

JUDGE