



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

(FAMILY DIVISION)

SUCCESSION CAUSE NO 1227 OF 1999

IN THE MATTER OF THE ESTATE OF JANE MUNJANGI MUKAI ALIAS MUNJANGI MUKAI ALIAS JANE WANJAGI NGUGI (DECEASED)

WANJIKU KAMAU.....1ST APPLICANT

WAKONYO MUKAI.....2ND APPLICANT

VERSUS

WAMBUI MUKAI.....1ST RESPONDENT

MUTAHI SUO.....2ND RESPONDENT

R U L I N G

1. The application before court is dated 9th September 2019 and seeks for one substantive order; that pending hearing and determination of an intended appeal the status quo be maintained preventing the Respondents, their descendants, agents, accomplices or successors in title from evicting the Applicants, charging, selling, transferring, constructing, planting or harvesting on L.R. No. 7785/424/original number 7785/8/57.
2. The application has been opposed by the 2nd Respondent vide a replying affidavit in which she states that the issues being raised are res judicata as the same were canvassed and determination made on the same by Ougo J who declined to review Rawal J's ruling and by Kimaru J who declined to grant stay orders pending appeal.
3. The 1st Respondent this time round filed a response supporting the application. He appears to have had a change of heart and supports the intended appeal.
4. This matter has had a checkered history. Rawal J dismissed an application that sought to annul a grant issued based on an oral will on the 10th of February, 2009. It is to be noted that a grant had issued on 5th of August, 1999 and confirmed on 14th April, 2000.
5. The Applicants sought for stay of the judgment of Rawal J pending an intended appeal in an application dated 10th April 2013, however due to inordinate delay and no demonstration of any action towards the appeal after the notice of appeal was filed on 21st March, 2012 and an extension having been given the same was dismissed.
6. On the 4th of November, 2017 the applicants sought inter alia for review and setting aside of orders of 5th May 2000, 14th April 2010 and the grant issued on 29th of April 2003 and a prohibition order against the Respondent from dealing with the property subject matter being L.R. No.7785/433 original No. 7785/8166.
7. The grounds for the said application were that there was an error apparent on the face of the record as the property in question did not belong to the deceased. The application was equally dismissed inter alia because the issues raised had been determined before and were res judicata.
8. The application before court sought to injunct the Respondents pending hearing of an intended appeal. A stay was declined due to the indolence of the applicants, an injunction and review application as equally denied due to delay and the fact that similar issues had previously been determined.

9. I must take note of the fact that the Applicants have had very bad counsel, there has been delay at every stage of this matter with no reason being adduced and counsel on record seem to rush to court whenever there is a threat.

There has to be an end to litigation and therefore it behoves parties to move the court within reasonable time limits.

10. I note though that this time round there is fresh evidence by the 1st Respondent wherein he confesses to have given false information to the court. This brings a new twist to the case and may be worth considering in the interest of justice.

11. The Applicants have been caught on technicalities at every attempt they have made in court which has denied them an opportunity to place their case before court.

Devoid of technicalities, bearing in mind Article 159(d) of the constitution and in order to allow the court to dispense with substantive justice, I will extend time within which the applicants may file their record of appeal and/or any other step as may be deemed necessary in view of the emerging evidence which action should be undertaken within the next 60 days of the date hereof.

12. Further, I will within the 60 days issue an order of injunction preventing the Respondents, their descendants, agents, accomplices or successors in title from evicting the Applicants, charging, selling, transferring, constructing, and or in any way from interfering within L.R. No. 7785/424/original number 7785/8/57.

13. Costs in the cause.

Dated and Delivered in Nairobi on this 6TH day of FEBRUARY, 2020.

ALI-ARONI

JUDGE