



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

Succ.App.2 OF 2019

(Appeal Originating from Nyahururu CM's Court Succ.79 of 1999 by: Hon. J. Wanjala – C..M.)

ROBENSON MUREMA MWANGI.....1st APPLICANT

ZIPPORAH WANGARI MWANGI.....2nd APPLICANT

VERSUS

FESTINA WANJIKU KAMURI.....PETITIONER/RESPONDENT

RULING

Before me is the summons dated 25/5/2019 expressed to be brought under Section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules.

The applicants Robenson Murema Mwangi and Zipporah Wangari Mwangi seek the following order:

- (1)spent;
- (2)spent;
- (3) *That pending the hearing and determination of their appeal, a prohibitory order be registered against L.R.Nyandarua/Kirima/5265, 5266 and 5267;*

The applicants have appealed against the judgment of Hon. Wanjala C.M. in *Nyahururu in CMCC.5/2018* which was delivered on 9/1/2019. The issues herein relate to the estate of Prisca Mwhaki Mumera who died on 2/5/1994 leaving behind two children, Paul Mwangi Mumera and Stephen Kamuri Mumera. Both Paul Mwangi and Stephen Karuri are also deceased. The applicants herein are children of the said Paul Mwangi while the respondent, Fastina Wanjiku Kamuri is the wife of Stephen Kamuri and hence a daughter in law of the deceased.

The petitioner/respondent filed Succession Cause No.79/1995 and only listed her children as the beneficiaries. Grant was confirmed to the petitioner as the sole heir of the deceased's estate on 28/2/2013. The applicants who represent Paul Mwangi's estate moved the court by a summons for revocation of grant dated 29/3/2018. They sought to have the grant revoked on grounds that it was obtained fraudulently and also a prohibitory order to be registered on the resultant subdivisions of the deceased's land, *Nyandarua/Kirima/5265, 5266 and 5267*.

On 9/1/2019, the court dismissed the said summons and that has provoked this appeal and this application seeking to prohibit any dealings on the subject land so as to preserve the land till the appeal is heard and determined.

Mr. Nderitu, counsel for the applicants argued that the respondent will not suffer any prejudice if the order is granted because an appeal is already filed. He further urged that the respondent has not demonstrated that she will suffer any loss if the order is granted.

The respondent opposed the application through her replying affidavit. The respondent seems to be addressing the merits of the appeal which the court is not considering at this stage.

The applicants' argument is that if the subject property is not preserved, the substratum of the appeal may disappear.

It is evident that the deceased's estate, that is, land had already devolved to the respondent after grant was confirmed and subdivision had proceeded. The parcel is subdivided into three parcels: 5265, 5266 and 5267 and transferred into the names of the respondent, Hellen Nyambura Githu and Samuel Maina Mutahi (R.M.M. 5(a)-(c)). Having been so transferred, and since there is no order barring the new registered owners from dealing with the land as they wish, the land which is the substratum of the appeal can easily disappear. The applicants being aggrieved with the court's order, have a right to appeal.

The respondent and the two new registered owners are in possession and even if a prohibitory order is registered against the land, they will not suffer any loss save for some delay as the appeal is heard.

The Judgment was read on 9/1/2019 and the applicants' counsel moved with alacrity to file the notice of appeal No.12/2019 by 4/2/2019. I note that a record of appeal has already been filed. It means that the applicants are indeed keen to have this appeal heard and determined.

This application is brought under Rule 73 of the Probate & Administration Rules which gives this court inherent powers to make such orders as may be necessary to meet the ends of justice and prevent abuse of the court process. In my view, it is in the interest of justice that the applicants be given an opportunity to exercise their right to be heard on appeal.

For the above reasons, I hereby grant the following orders:

- (1) *A prohibitory order to prohibit any dealings with the said parcels of land Nyandarua/Kirima/5265, 5266, 5267 in any adverse manner or disposing of them until the appeal is heard and finalized;*
- (2) *I also direct that the applicant must move with haste to ensure that the appeal is set down for hearing and heard within the next six months;*
- (3) *Costs to await the appeal.*

Dated, Signed and Delivered at Nyahururu this 5th day of March, 2020.

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R.V.P Wendoh

JUDGE

Present:

Eric – Court Assistant

Parties - absent