



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 7 OF 2016

IN THE MATTER OF THE ESTATE OF STEPHEN GUCHU CHURU (DECEASED)

TERESIA WANJIKU GUCHU.....APPLICANT

VERSUS

RUTH WANJIRU GUCHU.....RESPONDENT

RULING

1. The deceased Stephen Guchu Churu died intestate on 8th December 2015. On 4th May 2016 a grant of letters of administration intestate was issued to his widow Ruth Wanjiru Guchu (respondent). On 14th September 2016 the applicant Teresia Wanjiku Guchu filed an application for the revocation of the grant. Her case was that she constituted the second house of the deceased whom the respondent had failed to disclose to the court at the time of petitioning for, and being issued with, the grant. With the application was sought an order of interim injunction to restraint the respondent and her agents from surveying, subdividing, selling and or distributing the deceased's land parcels, which included the subject matter Ruiru West Block 1/Githunguri Plot No. 1529. On 12th July 2017 the court made an order in the following terms:-

“1).....

2) THAT in the meantime, the estate of the deceased shall be preserved so that none of the assets are to be sold or disposed of in any manner during the pending of the application dated 14th September 2016.”

2. On 18th December 2018 the applicant brought the present application seeking that the respondent and the Chairman (John Maina) of Githunguri Constituency Ranching Company Limited be found to be in contempt of the injunction order and, be each committed into civil jail, or be ordered to pay a fine or their property be attached. It was alleged that the respondent was aware of the injunction order because it was made in court in the presence of her counsel, and that the same order had been served on John Maina, but that they had caused land parcel Ruiru West Block 1 Githunguri plot No. 1529 to be registered in the name of the respondent who had then transferred it to one Wilson Gitau Gikubu.

3. John Maina responded to the application by saying that he was not served with the order and therefore was not aware of it. Further, he stated that there was no time this property was registered in the books of the company as belonging to the deceased.

4. The respondent stated that she was unaware of the court order because she had not been served with it. As for the land, she stated that the same had been sold to the deceased who, however, did not complete to pay for it. She completed the payment by paying Kshs.300,000/= on 16th March 2016 and became the owner. She then transferred it, now that she owned it.

5. Regarding service to John Maina, there is on record an affidavit of service sworn on 25th September 2017 (and filed on 29th September 2017) by process server Jackson Ngugi who stated that he proceeded to the office of Githunguri Constituency Ranching Company Limited situated at Ruiru near St. George Catholic Church within Kiambu where he was received by John Maina who introduced himself as the chairman with authority to receive process. He was served but refused to sign the process server's copy. The time was 12.20 pm. John Maina swore an affidavit to state that the instructions of the company was that any director who is served will append his signature to the documents being served, put the official rubber stamp on the face of the documents or at the back as proof of receipt. This is the standard procedure since the company is involved in many litigations as they have many shareholders and deal in land. The director will sign every document served on him. He denied ever having been served in this matter. There was no response to his replying affidavit.

6. Under **Order 5 rule 15(1)** of the **Civil Procedure Rules**, the process server did not indicate that he knew John Maina before. He did not indicate he had been to the offices of the company before, or how he knew their location. If the process server did not know John Maina before he was required to indicate the name and address of who identified him. John Maina stated that the company is located in one storey building, on the ground floor, rooms 2 and 3, which information was not sworn to in the affidavit of service.

7. As was stated in **Duncan Manuel Murigi –v- Kenya Railways Corporation [2008]eKLR**, contempt proceedings are criminal in nature and the standard of proof is much higher than in civil cases. The contemnor stands to lose his liberty and go to prison if it is proved that he was served with the order but that he had disobeyed it. The court must be certain that the contemnor was served with the order he is said to have disobeyed. The standard of proof in contempt proceedings is higher than proof on balance of probabilities but not as high as proof beyond all reasonable doubt (**Wildlife Lodges Ltd –v- County Council of Narok & Another [2005]2 EA 344**).

8. On the material before the court, I am not satisfied that John Maina was served with the order of interim injunction made by the court on 12th July 2017.

9. As for the respondent it is clear that the order of interim injunction was made in the presence of her counsel Ms Chepng'eno. In her replying affidavit sworn on 11th March 2019 she did not say she was unaware of the order, or that her advocate did not inform her about it. Her case was that the land did not belong to the deceased, and did not form part of his estate. It was in her counsel's written submissions that it was submitted that the order had not been personally served and that it had no penal notice. Written submissions are not evidence. I consequently find that she was aware of the interim injunction made on 12th July 2017. The issue of whether there was penal notice served on her does not arise. The order to protect the estate had been made in the presence of the lawyer, and she did not require to be served with it. It was intended to protect the estate, and had to be obeyed by all.

10. She stated that Ruiru West Block (Githunguri) Plot No. 1529 did not belong to the deceased because the deceased had not fully paid for it; that she had completed the payment to own it; that after she owned it she transferred it.

11. When the respondent petitioned for the grant she indicated this land to be part of the estate of the deceased. When the applicant filed summons for revocation of the grant she gave a list of the properties of the deceased in her supporting affidavit. She indicated this parcel to be part of the estate of the deceased. It was therefore common ground that Ruiru West Block 1 (Githunguri) Plot No. 1529 was one of the assets in the estate of the deceased. When the interim order of injunction was made on 12th July 2017, it was clear that this was one of the properties to be protected.

12. Consequently, I find that the respondent was in contempt of the order of 12th July 2017 when she, alone, decided that the property did not belong to the deceased and transferred it to a third party. In any case, the deceased died on 8th December 2015. She could not, subsequent to the death, start dealing with this property which she had at the time of the petition said it belonged to the deceased. That was intermeddling in the property of the estate. I find her guilty of contempt of the court order.

13. The respondent is hereby ordered to appear in court on **1st July 2020** to show cause why she should not be punished as is required by the law.

14. She will pay costs of this application.

DATED and DELIVERED electronically, following consent of the parties, at NAIROBI this 7TH day of MAY 2020.

A.O. MUCHELULE

JUDGE