



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 134 OF 2010**

**IN THE MATTER OF THE ESTATE OF ROBERT KAMAU NJOROGE (DECEASED)**

**ALEX NJOROGE ROBERT.....1<sup>ST</sup> APPLICANT**

**ANDREW KARIUKI KAMAU.....2<sup>ND</sup> APPLICANT**

**PETER KIMANI KAMAU.....3<sup>RD</sup> APPLICANT**

**MICHAEL GICHINGA KAMAU.....4<sup>TH</sup> APPLICANT**

**VERSUS**

**JANE WANJIRU KAMAU.....1<sup>ST</sup> RESPONDENT**

**HILDER NDUTA KAMAU.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The deceased Robert Kamau Njoroge died intestate on 15<sup>th</sup> March 2019. The applicants Alex Njoroge Robert, Andrew Kariuki Kamau, Peter Kimani Kamau and Michael Gichinga Kamau are his sons. Their mother Priscillah Wanjiku Kamau predeceased him. They petitioned the court on 12<sup>th</sup> March 2020 for the grant of letters of administration intestate. They acknowledged the 1<sup>st</sup> respondent Jane Wanjiru Kamau as their step-mother. A citation was issued to her. She responded by filing another petition jointly with her daughter Hilder Nduta Kamau (2<sup>nd</sup> respondent) seeking a similar grant. The petition was filed in the same cause.

2. My direction is that there can only be one petition in respect of a deceased person. Once the applicants filed their petition, what was open to the respondents was to file a notice of objection to the petition, an answer to the petition and a cross-petition for the grant.

3. I have already directed the petition filed by the applicants to be gazetted. Upon gazette, the respondents shall make the necessary response.

4. The respondents' case is that the 2<sup>nd</sup> respondent is a daughter of the deceased. This is disputed by the applicants. At an appropriate stage in the proceedings the court will determine the issue.

5. The present application by the applicants seeks an interim injunction against the 1<sup>st</sup> respondent to restrain her from intermeddling, interfering with, alienating or collecting rent from plot No.F.C/628/1525 Karagita (or FC/628(115/1525 Karagita) which is the property of the deceased. The application has other prayers but M/s Mukala for the applicants indicated that the protection and preservation of the estate through the above prayer was their main interest.

6. The 3<sup>rd</sup> applicant Peter Kimani Kamau swore a supporting affidavit to the application. His case was that the property belonged to the deceased at the time of his death, but that subsequently the ownership changed to the 1<sup>st</sup> respondent in a manner that was fraudulent. The alleged fraud was reported to the Director of Criminal Investigations. The property has developments that accrue rental income. The deponent produced an agreement dated 27<sup>th</sup> May 2017 ("PK – 2") in which the deceased commissioned Mwanzo Management Agencies Limited to be collecting the rent on his behalf. He (the deponent) stated that this was evidence that the deceased owned the property. He

stated that on 7<sup>th</sup> February 2020 the property ownership had purportedly moved to the 1<sup>st</sup> respondent and that this had been facilitated by Karagita (E.A) Ltd.

7. The application was served but did not receive any response.

8. During the presentation of the application, M/s Mukala indicated that her clients were relying on **rule 73** of the **Probate and Administration Rules**. The **rule** provides that:-

**“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”**

I am also aware of **section 47** of **Law of Succession Act (Cap 160)** which provides that:

**“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient:**

**Provided that the High Court may for the purpose of this section be represented by Resident Magistrates appointed by the Chief Justice.”**

However, there is **section 82(1)** of the **Act** which provides that it is only the **personal representative** of the estate of the deceased who has the power –

**“to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arise out of his death for his estate.”**

Under **section 3** of the **Act** a **personal representative**

**“means the executor or administrator of a deceased person.”**

9. The applicants have not been appointed as the executors or the administrators of the estate of the deceased. They have no capacity to protect the estate of the deceased, by suit or application.

10. Secondly, under **section 3** of the **Act**, the estate of the deceased means

**“the free estate of a deceased person.”**

From the applicants' own admission, when they filed the petition on 12<sup>th</sup> February 2020 and included the property in question as part of the estate of the deceased, the same had on 7<sup>th</sup> February 2020 been transferred to the 1<sup>st</sup> respondent. If the applicants seek to wrestle this property from the 1<sup>st</sup> respondent and return it to the estate of the deceased, that would be a dispute regarding the ownership of the property. The proper forum to hear and determine the dispute would be the Environment and Land Court under **Article 162(2)(b)** of the Constitution and **section 13** of the **Environment and Land Court Act**.

11. In other words, when the applicants are seeking an interim injunction to protect and preserve this contentious property, they are saying that this court has jurisdiction to hear and determine the contention. Quite unfortunately, under **Article 165(5)(b)** of the Constitution, this court has no jurisdiction to hear and determine the ownership of this property.

12. In conclusion, I find that for all these reasons the application is for dismissing. It is hereby dismissed.

13. I make no orders as to costs as the application was not defended.

**DATED and DELIVERED at NAIROBI this 15<sup>TH</sup> JULY 2020**

**A.O. MUCHELULE**

**JUDGE**