



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 15 OF 2007

IN THE MATTER OF THE ESTATE OF

JUSTUS M'MURITHI M'BAGIRI (DECEASED)

JEMA KARIMI.....OBJECTOR/1ST RESPONDENT

-versus-

TERESIA MWAKITHI.....PETITIONER/ 2ND RESPONDENT

JAMES TAITUMU KUBAI.....APPLICANT

RULING

1. Before me is a summons dated 18/5/2020 expressed to be brought under Rule 63 of the Probate and Administration Rules and Order 45 Rules 1, 2 & 5 of the Civil Procedure Rules which is seeking a review of the Ruling/Orders dated 7/5/2020.

2. The application was based on the grounds set out in the application and the supporting affidavit of James Taitumu Kubai. He deposed that he has an interest in the estate of the deceased estate in the nature of a claim of adverse possession in Originating Summons NO. 19 of 2012 pending before Meru Environmental and Land Court. In the year 2012 the respondent/objector tried to evict him from part of the estate which he had occupied since 1993. He then moved to court where he was granted orders for injunction.

3. On 10/5/2020 the Objector/1st respondent sent agents to the premises he occupies, while being armed with the ruling dated 7/5/2020 and informed him to begin paying rent. He read through the ruling and discovered that this court was misled to issuing orders against his interest, as the court was made to believe that he was a tenant in the premises that he occupies. The court was moreover not informed of the pending claim for adverse possession and of the subsisting orders against his eviction or interference with occupation of part of the estate of the deceased. The applicant herein therefore insisted that he was not a tenant as he has never paid rent. He maintained that if the orders are upheld it will occasion great prejudice as the objector has potential of successfully evicting him.

4. The application was opposed by the replying affidavit of Jema Karimi the administratrix of the estate of the deceased dated 22/5/2020. She argued that the applicant herein is a stranger to the estate and he is intent to staying thereon while collecting rent from the estate. The orders of the court dated 7/5/2020 restrained the applicant from collecting rent.

5. It was her contention that this court has no jurisdiction to determine adverse possession claims in matters of succession and she was under no obligation to inform the court of unascertained claims. Therefore, as long as the applicant is not a beneficiary of the estate of the deceased and his claim in the ELC court has not been ascertained, he remains a stranger to the estate of the deceased and has no locus to move this court.

ANALYSIS AND DETERMINATION

6. I have been asked **to review the ruling dated 7/5/2020**. Is the request merited in law?

7. In my reading of the application, matters stated do not fit '*discovery of new and important matter which could not have been adduced at the time the order was made*'. I do not also see any error or omission on the face of the record. Perhaps, I should seek to find out whether there is any sufficient reason to review the ruling.

8. Sufficient reason should be deduced from the facts and circumstances of each case. What are the circumstances of this case?

9. Generally, preservation of the estate property remains constant throughout the administration of the estate. To achieve this, the court may

impose soft orders of collection and management of the assets or revenue derived from the assets of the deceased. In extreme cases, it may impose coercive measures which include eviction or taking of possession or punishment of persons intermeddling with the estate property. Orders in question were made to facilitate due administration of the estate.

10. I do note that the applicant is wielding forth a claim of adverse possession as a spear to force a review of the orders of this court. His claim is yet to be determined by Environment and Land Court which has the requisite jurisdiction to try the claim. Notably, his claim has been pending since 2012 and one wonders why it has not been concluded. Significant to note is that there is no order on ownership of the suit land from ELC which is in favour of the applicant or which this court could give effect. Accordingly, in the absence of such order, the applicant has not shown any sufficient reason to warrant review of my orders.

11. But before I close, let me state that, the arguments by the applicant may be profitable to an application under rule 41 of the Probate and Administration Rules; but of course, such application is to be made before confirmation of grant. The application before me is not such application.

12. In light of the above I find that the application dated 18/5/2020 has no merit and is therefore dismissed.

Dated, signed and delivered at Meru this 6th day of October 2020

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F. GIKONYO

JUDGE

Representation

Kariuki for objector

Muchiri for Petitioner

Mwanzia for interested party – absent

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F. GIKONYO

JUDGE