



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 14 OF 2016**

**IN THE MATTER OF THE ESTATE OF PATRICK KAANGAH BARIMBA (DECEASED)**

**SAFINA NKATHA KAANGA.....PETITIONER**

**VERSUS**

**WILSON KIRIMA KAANGA.....OBJECTOR**

**AND**

**MURURU SHADRACK MEEME.....INTERESTED PARTY/APPLICANT**

**R U L I N G**

1. By a Summons dated 25/08/2020 brought pursuant to **Section 47 of the Law of Succession Act CAP 160 Laws of Kenya, Rule 49, 63 and 73 of the Probate and Administration Rules**, the applicant sought, amongst other orders, the inhibition of land parcel No. KANGETA/KANGETA/2804 (hereinafter "*the Suit Land*") pending the hearing and determination of the summons dated 30/01/2020.
2. The grounds upon which the application was grounded upon were set out in the body of the Summons and the supporting affidavit of **Mururu Shadrack Meeme** sworn on 25/08/2020. It was contended that; the applicant bought the suit land from the deceased on 4/07/2014 through an agreement witnessed by the petitioner, that the petitioner had failed to disclose this fact to the Court.
3. He further contended that the deceased had applied to the land adjudication office for the transfer of the suit land to the applicant's name. However, he died before the transfer was effected. That the applicant was thereafter given possession of the suit land which he has extensively developed.
4. The applicant further contended that, while this Cause was commenced and prosecuted without his knowledge, the petitioner and other beneficiaries have now started to interfere with his possession of the suit land.
5. The Summons was opposed by **Jerusha Kagendo Kaanga** vide her replying affidavit of 10/09/2020. She deponed that, the applicant was not yet a party to these proceedings. That the judgment of 14/11/2019 had conclusively dealt with all issues with respect to the suit land and had held that she was the rightful beneficiary of the same.
6. That the petitioner had attempted to disinherit her by alleging that the suit land had been sold to one **David Mbirithu** which was not true. That the current application was an attempt by the petitioner assisted by the applicant to disinherit her having failed earlier on. That this Court lacks the jurisdiction to determine the validity or enforceability of the subject sale agreement.
7. The Court has considered the respective affidavits of the parties as well as the submissions. The applicant submitted that he was not a stranger to the proceedings. That the **Law of Succession Act** allows any person who has any interest in the estate of a deceased person to come to court for reliefs.
8. That in his application of 30/01/2020, he had sought the review of the judgment of 14/11/2019 but limited to the distribution of the suit land. Reliance was placed on **In re Estate of Julius Ndubi Javan (Deceased) [2018] Eklr**, in support of those submissions.
9. **Section 68(1) of the Land Registration Act** provides as follows: -

***“(1) The court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time, or until the occurrence of a particular event, or generally until a further order, the registration of any dealing with any land, lease or charge.***

*(2) A copy of the inhibition under the seal of the court, with particulars of the land, lease or charge affected, shall be sent to the Registrar, who shall register it in the appropriate register.”*

10. In Japhet Kaimenyi M’Ndatho v M’Ndatho M’Mbwiria [2012] Eklr, Makau J held: -

*“In an application for orders of inhibition, in my understanding, the applicant has to satisfy the following conditions: -*

*a) That the suit property is at the risk of being disposed of or alienated or transferred to the detriment of the applicant unless preservative orders of inhibition are issued.*

*b) That the refusal to grant orders of inhibition would render the applicant’s suit nugatory.*

*c) That the applicant has arguable case.”*

11. Before delving into the merits of the Summons, it is imperative to first consider the applicant’s *locus standi*. *Locus standi* is the right to bring an action or appear before court. In his application dated 30/1/2020, the applicant seeks, among other orders, to be enjoined as an interested party and the review of the judgment of 14/11/2019. His claim is that he had purchased the suit land.

12. **Rule 2 of The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013** defines an interested party as *a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation.*

13. **Rule 7** allows a person, with the leave of Court, to be enjoined as an interested party. Further, a court may on its own motion join any interested party to the proceedings before it.

14. The applicant was not a party to the Cause. He was neither a beneficiary nor a dependant of the deceased. He has sought to be enjoined to the cause as an Interested Party of which the same is yet to be heard. The claim he has staked is recognized under the law. He has the requisite locus to bring the present application.

15. The applicant has sought that the subject title be inhibited in order to preserve the suit land pending the determination of his application for the review of the judgment made on 14/11/2019.

16. Both the applicant and **Jerusha Kagendo Kaanga** allege that they are in possession of the suit land. That cannot be the case. One must be cheating. At the hearing of the Cause, it was never disclosed that any 3<sup>rd</sup> party was in possession of any part of the estate of the deceased. I am inclined to believe **Jerusha Kagendo Kaanga** that she is the one in possession of the suit land.

17. In the circumstances, I will order that the title for **LR. Kangeta/Kangeta/ 2804** is not to be dealt with until the application dated 30/1/2020 is heard and determined. The prayer to restrain **Jerusha Kagendo Kaanga** from interfering with the suit land in terms of prayer 2 of the Summons is hereby declined.

18. Accordingly, safe as aforesaid, the application is hereby dismissed with no order as to costs.

SIGNED at Nairobi.

**A. MABEYA, FCIArb**

**JUDGE**

**DATED and DELIVERED at Meru this 10<sup>th</sup> day of December, 2020.**