



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NUMBER 403 OF 2009

IN THE MATTER OF THE ESTATE OF THE LATE JOHN GACHUHI MUTEGO (DECEASED)

LEONARD WAWERU GICHUHI.....1ST APPLICANT

MARY WANJIKU GICHUHI.....2ND APPLICANT

ESTHER WANGARI THUITA.....3RD APPLICANT

VERSUS

MARAY WANJIKU MANGARA.....1ST RESPONDENT

ESTHER WANJIKU MUHIU.....2ND RESPONDENT

WANJIKU KIMANI RUO.....3RD RESPONDENT

NYAKIAMBI WOMEN GROUP.....4TH RESPONDENT

RULING

1. By directions of Court dated 9/10/18, the protestor was directed to file skeletal submissions to draw a distinction between the position held in the protest and the position as adjudicated upon by the Court vide its ruling of 30/3/17. The court was then to be in a position to make a decision as to directions as to whether to hear the matter viva voce or otherwise.
2. In their skeletal submissions, the protestors have stated that the court is being invited to find for the protestors that property that is in dispute cannot effectively form part of the estate of the deceased for purposes of sharing out among the beneficiaries.
3. It is urged that the property in question is laden with disputes that are not within the jurisdiction of the court.
4. The protestors further aver that the protest is not an invitation to review the court's ruling dated 30/3/17 contrary to the position taken by the administrator.
5. Am urged to find it plausible to order that the disputed property be removed or set aside from the schedule of the assets of the estate of the deceased in order for the disputes to move to the relevant court for a decree on the ownership of the property.
6. Am referred to the decision in the **Estate of Francis Peter Njuguna Rugiri (Deceased) [2016] eKLR**.
7. In rejoinder, it is submitted for the administrators that in the estate of **Francis Peter Njuguna Rugiri**, before Court was an application under **Rule 42** of the probate and administration Rules seeking exclusion of one of the properties from the schedule of properties. There is no such an application before court. The decision, therefore, has no relevance to the present case.
8. It is urged that under **Paragraph 33** of the ruling of court dated 30/3/17 the protestors ought to enforce any judgement they may have as they contend in **HCCC No 113 of 1997**. The protest in this matter is misplaced.
9. I have had regard to the summons for confirmation of grant and the affidavit of protest. I have had due regard to Counsel skeletal submissions. I have applied my mind to the ruling of court dated 30/3/17.

10. It is clear beyond per adventure that the protest as lodged and when juxtaposed with the ruling of court of 30/3/17 is misplaced. The protestors ought to be guided by the ruling of court of 30/3/17 and specifically paragraph 33 of that ruling to chart their course going forward. That paragraph read as follows:

“Paragraph 33. Matters are compounded further by the existence of the suit High Court Civil Suit No.113 of 1997 (O.S). It has been stated from the respondents that the said suit was compromised through a consent. While from the record, I have been unable to see any copy of the said consent either as an annexure or a stand alone document, it is inexplicable why it was necessary for the respondents to stake their claim to the suit land through a succession cause in 2009, when they ought to have executed the decree in H.C.C.C. No.113 of 1997 against the estate if at all they had orders in their favour. This casts a lot of uncertainty on the existence of the consent alluded to and on the general bonafides of the respondents.”

11. Certainly, the protestors remedy lies in pursuing the decree alluded to above or filing suit against the administrators or at the very least seek a stay of these proceedings to await determination of the ownership of parcel No LR No.1024 Mirera Suswa Southern Naivasha Municipality or move the court seeking to the exclusion of Parcel of land No No LR No.1024 Mirera Suswa Southern Naivasha Municipality from the list of assets.

12. On record are properly appointed administrators who cannot be stopped from carrying out their mandate which includes to seek confirmation of grant.

13. The protest herein seeks to reopen the issues this court exhaustively dealt with in the court’s ruling dated 30/3/17. The protest is *res Judicata*.

14. The protest is struck out for the reasons stated.

15. The Summons for confirmation of grant be set down for hearing forthwith.

16. Each party to bear its own costs.

Dated and Delivered at Nakuru this 12th day of June, 2019.

A. K. NDUNG’U

JUDGE