



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 3032 AND 2445 OF 2001

IN THE MATTER OF THE ESTATE OF KIIRU WANJOHI (DECEASED)

RULING

1. The Applicant herein, MARY WANJERI KIIRU filed an application dated 17th September, 2018 which she amended on 17.10.2018 seeking the following orders:

(i) THAT this Application be Certified as urgent in the first instance.

(ii) THAT the firm of CarrolyneJeruto be granted leave to be on record for the Applicant.

(iii) THAT Lucy Wandia the personal representative of the Estate of Deceased be ordered to comply with section 83 (e) of the Law of Succession Act by rendering a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account.

(iv) THAT this Honourable Court be pleased to order LUCY WANDIA the personal representative of the estate of the deceased to comply with the Honourable Court Order by the then Honourable Lady Justice Rawal dated 22nd September, 2009 by releasing a sum equivalent to 10% of the shares of both the Administrators from the rent received from flats on plot No. 14213 DANDORA to the Applicant a beneficiary of the Estate of the Deceased MARY WANJERI KIIRU.

(v) THAT this Honourable Court pleases to order for injunction restraining LUCY WANDIA, her children relatives agents an or any person acting on her behalf from administering the estate of the late KIIRU WANJOHI i.e.

(a) Plot Nos. DANDORA PHASE IV PLOT NO. 142 B

(b) DANDORA PHASE II PLOT 3502

(c) KAYOLE SOWETO PLOT NO. 534

(d) NRB BLOCK 102/93

(e) NBI BLOCK 102/354

(f) BAHATI KABATINI BLOCK 1/203

(g) EMBAKASI RANCHING PLOT 374

(h) KENYA BREWERIES SHARES

(i) SUKUMA WIKI

(j) MAKADARA SHARES - Selling, transferring, charge, bidding subdividing, leasing or dealing with the said properties in whatsoever manner until hearing and determination of this application.

(vi) THAT this Honourable Court be pleased to grant temporary orders of injunction in terms of prayer (4) herein above.

(vii) THAT Costs of this Application be provided for.

2. The Application is supported by the affidavit of the Applicant in which she stated that the Court ordered on 22.9.2009 that 100% of the shares of both the administrators be paid to her in trust for her children but she has not been paid since the year 2000 to date.

3. The Respondent filed a Notice of Preliminary Objection and a replying affidavit in which she stated as follows:

(i) THAT the Application is based on a complete misapprehension of the facts of this matter and/or is otherwise a deliberate attempt to mislead this Court.

(ii) THAT the entire estate was distributed in terms of the Certificate of confirmation issued on 7.3.2003 and was amended on 22.9.2009 and further that all sums claimed have been fully paid and acknowledged.

(iii) THAT the Respondent's late husband was a joint administrator with Sammy Anthony MbogoKiiru and the properties have been registered in the name of other parties.

(iv) THAT Dandora Phase IV Plot No. 142 B (GitariMarigi) has reverted back to the name of the deceased's despite that the Respondent was issued with the plot card and that she believes Applicant instigated the charge.

(v) THAT the Applicant's Advocate is not properly on record because the previous Advocates had not ceased from acting for the Applicant and further that the injunction court issue against the Respondent as the properties are already in the control of their responsibilities.

4. The parties were directed to file written submissions in the Application which I have duly considered. I find that the averment in the Replying Affidavit that the sums claimed have been fully paid and acknowledged and the properties registered in the names of their respective beneficiaries.

5. I also find that the Applicant's Advocate has not been granted leave to come on record and the former Advocate has not been served with the Application seeking leave to come on record since confirmation had already been granted in this matter.

6. The Respondent has attached a consent signed by the Applicant dated 17.2.2016 and a final payment made on 23.8.2013 also signed by the Applicant and witnessed by Kennedy Maina.

7. I find that the Respondent has shown that she complied with the order made on 22.9.2009 in respect of release of money to the Applicant.

8. On the issue of the injunctive order, the Respondent stated that the Properties have already been registered in the names of the respective parties who are not parties to this application.

9. I find that the estate has already been distributed and the current application has been overtaken by events.

10. There is no indication that the Respondent was even substituted as an administrator of the estate and the Applicant has not proceeded against the other administrator one Samuel Anthony Mbogo who was a co-administrator with the husband of the Respondent ELVIS WANJOHI KIIRU (Deceased).

11. The injunctive orders cannot issue as the properties have been transferred to other beneficiaries who have not been enjoined in this application.

12. The Application dated 17th September, 2018 amended on 17.10.2018 is accordingly dismissed with no orders as to costs.

DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 20TH DAY OF SEPTEMBER, 2019

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI.