



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

SUCCESSION CAUSE NO.76 OF 2017

IN THE MATTER OF THE ESTATE OF MARY NJERI KIMANI alias MUCEKE KINYANJUI – DECEASED

AND

JAMES KIMANI KINYANJUI.....APPLICANT

- V E R S U S -

SYMON KINYANJUI GACHIGWAH.....RESPONDENT

R U L I N G

Before me is the summons dated 1/4/2015, brought by **James Kimani Kinyanjui** (applicant) who seeks for an order of injunction restraining the respondent **Symon Kinyanjui Gachigwah (Respondent)** by himself, his agents or servants from subdividing, selling, demanding, dividing or in any way interfering with the parcel of land **Nyandarua/Mawingo/227**.

It is also prayed that the letters of administration intestate made to the respondent on 8/12/2014 be suspended or stayed pending hearing of this application. The applicant contends that the grant was obtained fraudulently by making a false statement and by concealment from the court of material fact; that the respondent failed to diligently administer the deceased's estate. In the supporting affidavit, the applicant deponed that he is the son of **Mary Njeri Kimani alias Muceke Kinyanjui** who died on 12/9/2002; that the deceased had three children, namely **Symon Kinyanjui** (the respondent), James Kimani and Agnes Wanjiku Kinyanjui; that Symon filed this petition for letters of administration which were issued to him on 8/12/2014 (JKK1), that the respondent concealed material facts to the effect that the deceased left a will (JKK2); that since the respondent obtained the grant, he has sold 8 acres of land to four persons and two people have built permanent structures thereon; that the applicant sold an acre of his share JK3; that to date the letters have not been confirmed and the applicant fears the estate will be wasted as the respondent is selling more land; that the respondent has already sold all his share and an acre from the applicant's and Agnes' entitlement and that it is necessary for the court to preserve the estate.

When the application came up for hearing, the respondent's counsel had sent Mr. Waichungo to hold his brief and ask for an adjournment because Mr. Mwangi Advocate, counsel for the respondent had not filed his replying affidavit.

The application was opposed and the court upheld the objection because this application was filed way back in 2015. The respondent has had over three years to file a replying affidavit which he has not done. The court found the application for adjournment to lack in merit and proceeded to hear the applicant.

The applicant has annexed a document to the application which he purports to be a Will left by the deceased. Unfortunately, the said document is written in vernacular (Kikuyu) and the counsel never bothered to file a translation. The court cannot tell what the document is all about. To the court, it is a piece of paper.

The applicant also alleges that the land has been sold by the respondent. However, he did not attach any document as evidence of the sale transactions.

Even though the respondent did not file any response, the applicant has to support his averments with evidence and not mere statements. For that reason, I will only grant an order of preservation of the estate in terms of prayer 3 of the application.

I will however decline to suspend the letters of administration as prayed in prayer 4 because the applicant has not demonstrated the need.

The application succeeds in part.

Prayer 3 granted.

Prayer 4 declined.

Costs to be in the cause.

Dated and Signed at NYAHURURU this 8th day of October, 2018.

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R.P.V. Wendoh

JUDGE

PRESENT:

Mr. Kihiri holding brief for Mr. Chege – Advocate for the Applicant/Respondent

Soi - Court Assistant