



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

SUCCESSION CAUSE NO. 192 OF 2014

IN THE MATTER OF THE ESTATE OF JAMES MASAI WAFULA - DECEASED

MICHAEL MASAI WAFULA.....PETITIONER/RESPONDENT

VERSUS

KENNEDY MUYUNDO1ST APPLICANT

VIVIAN K. LUGALIA2ND APPLICANT

RULING

1. The summons for revocation of grant dated 19/7/2016 by the applicants seeks that the grant issued to the petitioner herein be revoked on the ground that he did not consider their interest and specifically the lease contract entered between the deceased and them on 1/04/2014.

2. The applicants have in their supporting affidavit attached several annexures which included the lease agreement itself as well as the improvements therein. The court has perused the same extensively.

3. The Respondents have on their part raised a preliminary objection on a point of law that the applicants have no locus standi to challenge the grant.

4. I have examined carefully the application as well as the submissions by the parties herein. There is no doubt that by the time the deceased died the lease agreement was still subsisting. The preamble to the lease stated that it referred to the deceased as well as his "heirs, assigns and administrators". Clearly the respondent takes full responsibility on this.

5. Does this cause become the proper forum to agitate their claim? I do not think so. The substantive reason is that the issues between the applicants and the respondent is purely contractual in nature.

The lease was to subsist for 20 years. Apparently the deceased died after the lease was executed.

6. In my view therefore the only interest due to the Applicants herein is the remainder of the lease. They cannot claim to be beneficiaries to the capital assets of the estate.

7. The proper forum to agitate their claim would be another forum not this. The succession Act is special in nature. It does not in my view anticipate the circumstances obtaining herein. If for instance they defaulted in rent payment or the lease be terminated, then the proper forum would be Rent Tribunal or any other legally provided channel but not the succession proceedings.

8. Infact, by virtue of the fact that there is an administrator to the estate, the proper recourse would be to tussle with him outside this forum.

9. The question surrounding the registration or non registration of the lease or the rent in arrears or not is not for this court to decide under the provisions of the succession Act.

10. In the premises I do doubt whether the provisions of Rule 63 (1) of the Probate Rules anticipated this kind of proceedings, otherwise it would have been clearly spelt out.

11. For the foregoing reasons I shall uphold the preliminary objection. The issue at hand is purely contractual in nature and not a matter to be litigated under the Succession Act. Whatever rights and obligation between the parties herein enshrined in the lease agreement can adequately be addressed elsewhere.

12. The preliminary objection is upheld. The application dated 19/7/2018 is dismissed and the interim orders earlier issued vacated. Costs to the Respondents.

Delivered, signed and dated at Kitale this 10th day of December, 2018.

H.K. CHEMITEI

JUDGE

10/12/18

In the presence of:

Wanyama for the Applicant

Ndarwa holding brief for Kiarie for the Petitioner

Court Assistant – Kirong

Ruling read in open court.