



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

SUCCESSION CAUSE NO. 271 OF 2005

IN THE MATTER OF THE ESTATE OF PIUS GACHOKI MUCHIRA (DECEASED)

SIMON MUCHIRI GACHOKI.....ADMINSTRATOR/APPLICANT

VERSUS

WILLIAM NJOGU GACHOKI.....1ST RESPONDENT

PAULINE M GACHOKI.....2ND RESPONDENT

R U L I N G

A. Introduction

1. This is a ruling for the summons dated 17th July 2018 by the other dated 19th July 2018 by the 2nd Respondent.
2. The summons dated 17th July 2018 seek the following;

a) That Summons be urgently issued to the two Respondents and an order be issued to the two respondents directing them to produce in court the original two title deeds in Land Parcel Gichugu/Settlement/884 and in Land Parcel No. Gichugu/settlement/511 to enable the distribution of the estate of the late Pius Gachoki Muchira which has stalled

b) That an order be issued to the officer in charge Gathoge Police patrol base and or Defathers Post to provide security to the surveyors who are to subdivide Land Parcel No. Gichugu/ settlement/884 and Land Parcel No. Gichugu/Settlement/511.

c) That a permanent restriction order be issued to the respondents herein, their children, their agent, servants, employees and any other person authorized by them or acting on their behalf from any further cutting down of coffee plants, fences, tilling the applicant's side of the estate, trespassing, cutting down all types of trees, harvesting any produce or trespass on the portion of the land that the Applicant occupies currently or in future to the portion that will be apportioned to him and any other beneficiary as per the grant issued by the court on 9th July 2018.

d) That the costs of the application be provided for.

3. The summons dated 19th July 2018 seek the following;

a) That this honourable court do grant prohibitory orders restraining any dealings with the deceased's estate namely Land parcel No. Gichugu/settlement/884 and Land Parcel No. Gichugu/settlement/511 pending hearing and determination of the pending appeal.

4. By consent the parties urged court to prepare its ruling by considering the pleadings on record for the two summons.

B. Applicant's Case

5. In his affidavit of support of his summons dated July 2018 the administrator herein deponed that the respondents herein had refused to co-operate with him towards execution of the grant confirmed on 9th July 2018.

6. He further deponed that the respondents had refused to produce the original titles of the suit property and as such he couldn't carry out his duty as the administrator of the deceased estate.

7. In his response to the respondent's summons dated 19th July 2018, the administrator deponed that he was opposed to the application by the respondents dated 17/07/18 for it amounted to an abuse of the court process.

8. He further deponed that respondents intended appeal had no basis since they had never raised an appeal from the decree dated 31st July 2013 and thus precluded from disputing the correctness of the decree in any appeal which may be preferred from the final decree dated 3rd July 2018.

9. The administrator further deponed that mere filing of a notice of appeal was not an automatic stay of proceedings and thus did not prevent him from carrying out his duties as an administrator of the deceased's estate.

10. He further deponed that the respondent's application had been overtaken by events as the Deputy Registrar had already executed his mandate in furtherance of court order to aid in his duties as administrator of the deceased's estate.

11. He further deponed that the respondents had failed to provide security as a pre-requisite for any other delay in his enforcement of his duties as administrator of the deceased's estate at their expense.

C. Respondent's Case

12. The 1st respondent deposed that by surrendering the original title deeds to the administrator, he would proceed with execution of the Confirmed Grant and consequently their appeal would be rendered nugatory.

13. In support of her summons dated 19th July 2018, the 2nd respondent deponed that she intended to file an appeal being dissatisfied with the court ruling as her children had not been provided for in distribution of the deceased's estate. And consequently urged the court to grant the prohibitory orders sought.

D. The Determination

14. I have perused the court file and noted that this is an old case that has dragged in court since 23/06/2008 when the grant was confirmed. This court ruled in favour of the administrator and gave him the go ahead to implement the grant.

15. This court did note that the respondents have delayed the implementation of the grant for about 10 years to date with their persistent applications serving only to delay justice to the beneficiaries in the estate. The grant was confirmed on 31st July 2013 and none of the respondents appealed against the confirmation. Lodging an appeal against this court's ruling delivered on 3rd July 2018 does not add value to the respondents' persistent push for a larger share of the deceased's estate if the grant has not been challenged.

16. The respondents oppose the summons by the administrator giving no valid reason other than that their intended appeal will be rendered nugatory. It is upon this basis that their summons dated 19th July 2018 seeks this court's intervention to prohibit any dealings in the deceased's estate.

17. In regards to the summons dated 19th July 2018, I am convinced that no sufficient evidence has been adduced by the respondents to stop this court from granting the orders sought therein. In fact, the only substantial response given by the respondents is that they intend to lodge an appeal.

18. The endless litigation by the respondents is aimed at causing further delay in distribution of the estate. The respondents seem to be determined to frustrate the administrator in executing his noble duty of giving the beneficiaries their shares just because they want bigger shares.

19. The applicant deposes in his affidavit that he has been threatened by the 1st respondent who is an officer with General Service Unit (GSU) that he will never implement the grant. This conduct amounts to the 1st respondent attempt to take the law in his hands to frustrate a process already authorised by the law.

20. The 2nd respondent has moved to plant crops on the portion of the applicant knowing that she has no legal basis to do that. It would be prudent for the respondent to wait for hearing and determination of their appeal and maintain *status quo* on the ground failure to which the long arm of the law may be applied to deal with the impunity.

21. As for the title deeds, the administrator requires to be facilitated to proceed with the implementation of the grant.

22. The respondents' summons dated 19th July 2018 seek for prohibitory orders on grounds that a notice of appeal has been filed. The respondents have not demonstrated that their appeal has any chances of success. A court of law will not issue orders that are not likely to serve the interests of justice.

23. In my considered view, the respondent's appeal stands little chance of success and it is not worth putting the implementation of the grant at a standstill.

24. Having considered all the issues raised in the two applications, I make the following orders: -

a) That the summons dated 17/07/2018 is merited and allowed in the following terms: -

i. That the Land Registrar Kirinyaga dispenses with the production of the original title deeds for LR. Gichugu/ Settlement Scheme/884 and Gichugu/Settlement Scheme/511 in the implementation of the grant.

ii. That the OCS Gichugu Police Station provides security for the sub-division of LR. Gichugu/Settlement Scheme/884 and LR. Gichugu/Settlement Scheme/511 in the implementation of the grant.

iii. That the respondents by themselves, their servants, agents, employees are hereby restrained from interfering with the portions of other beneficiaries pending the hearing and determination of the appeal.

b) That the summons dated 19/07/2018 is hereby dismissed for lack of merit.

c) That the respondents meet the costs of these applications.

25. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 4TH DAY OF DECEMBER, 2018.

F. MUCHEMI

JUDGE

In the presence of: -

1. Mr Muriithi for Waweru for the respondents.

2. Applicant, Mr Simon Muchiri.