



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**SUCCESSION CAUSE NO. 1553 OF 2011**

**IN THE MATTER OF THE ESTATE OF WANJIRU KIMARI (DECEASED)**

**RULING**

1. The deceased herein died on 14<sup>th</sup> August 1985. Representation was sought to her estate vide a petition lodged in this cause in an unknown date in 2011 by Hannah Mukami and Milly Mukami, in their alleged capacities as daughters and daughters-in-law of the deceased. A grant was made to them on 7<sup>th</sup> February 2012. The grant was confirmed on 29<sup>th</sup> April 2013 and the estate devolved wholly upon Hannah Mukami.

2. A summons was lodged herein on 9<sup>th</sup> March 2016, dated 8<sup>th</sup> March 2016, at the instance of six individuals, seeking revocation of the confirmed grant, on the grounds that they too were survivors of the deceased, but had not been disclosed in the cause as such.

3. Simultaneously filed with the said revocation application was a summons, also dated 8<sup>th</sup> March 2016, naming the administrators as respondents, seeking restraining orders with respect to the estate assets. The application was placed before Muigai J. who ordered that the estate be preserved under section 45 of the Law of Succession Act until hearing and determination of the matter.

4. On 16<sup>th</sup> June 2016 another application was lodged at the registry seeking that a Eliud Mwangi Macharia and the Nairobi City County Government be joined to the proceedings as respondents, and restraining orders be granted against them with regard to the estate assets. The case for the applicants was that the property in question had been sold to Eliud Mwangi Macharia. Joinder was being sought on that basis. Temporary orders were granted on 4<sup>th</sup> July 2016 by Achode J. restraining Eliud Mwangi Macharia and the Nairobi City County Government pending hearing and determination of the application.

5. Eliud Mwangi Macharia responded to the application vide his replying affidavit sworn on 19<sup>th</sup> July 2016. He avers that the subject property, Plot No. 71 Huruma Site and Service Scheme was sold to him by the administrators vide an agreement dated 3<sup>rd</sup> December 2015. He asserts that he is now the owner thereof. He states that the administrators had by then competence to sell the property to him as they had been confirmed on 29<sup>th</sup> April 2013. He has attached a copy of the sale agreement of the subject property, and the certificate of confirmation of grant in the matter to support his case.

6. There is another reply to the application by the first administrator, Hannah Mukami, sworn on 30<sup>th</sup> September 2016. She asserts that she legally sold Plot No. 71 Huruma Site and Service Scheme to Eliud Mwangi Macharia, and therefore the same no longer formed part of the estate of the deceased. She dismisses the application as frivolous..

7. The application was argued orally before me on 26<sup>th</sup> October 2016. Mr. Mwangi urged it on behalf of the applicants, Mr. Michuki stated the case for Eliud Mwangi Macharia and Mr. Githinji argued the case for the first administrator.

8. Orders were made *ex parte*, although on interim basis, on 17<sup>th</sup> June 2016. As extracted, the orders were targeted at the parties sought to be enjoined to the proceedings. It would mean that there are orders in place in this cause against the said parties although they are yet to be formally enjoined to the

proceedings. In my view the grant of the interim orders against the proposed parties had the effect of enjoining them to the proceedings for in the event of their contravention of the said orders they stood liable to prosecution, for contempt of court. Ideally, court orders can only bind persons against whom such orders are directed. Ideally, the orders target persons who are parties, and who should have right of reply.

9. In the circumstances, there is really little for me to do except to formally enjoin Eliud Mwangi Macharia and the Nairobi City County Government as respondents to the revocation application dated 8<sup>th</sup> March 2016. I shall confirm the orders made on 17<sup>th</sup> June 2016. The said orders shall remain in force during the pendency of the revocation dated 8<sup>th</sup> March 2016. It is so ordered.

**DATED and SIGNED at NAIROBI this 3<sup>RD</sup> DAY OF MAY, 2017.**

**W. MUSYOKA**

**JUDGE**

**DELIVERED and SIGNED this 5<sup>TH</sup> DAY OF MAY, 2017.**

**M. MUIGAI**

**JUDGE**