



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
SUCCESSION CAUSE NO. 1566 OF 2013

IN THE MATTER OF THE ESTATE OF FRANCIS PETER NJUGUNA RURIGI alias FRANCIS P. NJUGUNA RIRUGI alias FRANCIS NJUGUNA alias F.P. NJUGUNA RURIGI alias FRANCIS PETER RURIGI (DECEASED)

JANE NYAMBURA KAMUCHU.....APPLICANT

VERSUS

ROSE WAMBUI NJUGUNA.....RESPONDENT

AND

AGNES WAIRIMA GATHII.....1ST PETITIONER

ANTHONY GICHURU NJUGUNA.....2ND PETITIONER

TERESIA WAIRIMU NJUGUNA.....3RD PETITIONER

RULING

1. The deceased died intestate on 31st May 2013. Letters of administration intestate of his estate were taken out by Agnes Wairima Gathii (1st petitioner/widow), Anthony Gichuru Njuguna (2nd petitioner/son) and Teresia Wairimu Njuguna (3rd petitioner/daughter). In the affidavit in support of the petition for grant, it was stated that the deceased was survived by one wife and eight children. The grant was issued to them jointly on 3rd November 2014 and is yet to be confirmed.

2. The respondent, Rose Wambui Njuguna objected to the confirmation of the grant issued to the petitioners, stating that she was a widow of the deceased and together with her three children, were entitled to benefit from the estate left by the deceased. The applicant, Jane Nyambura Kamuchu also filed an affidavit of protest against confirmation of the grant stating that she was also a widow of the deceased with whom he had two minor children, and are thus entitled to benefit from the estate of the deceased. She together with Teresia Wairimu Rurigi, the mother of the deceased, subsequently filed an application for grant by way of cross-petition.

3. The respondent subsequently filed an application dated 26th November 2014 seeking orders of

exclusion/removal of Plot No.1-310 Mathare North from the list of properties comprising the estate of the deceased for reasons that the said property solely belonged to her and not among the properties of the deceased. The applicant opposed this application via her replying affidavit dated 2nd February 2015 stating that she was married to the deceased since 2001 and they lived together with him and their two children in Plot No.1-310 Mathare North. She continues to live on the said plot with her children. It was her case that the deceased purchased the property and only incorporated the name of the applicant as a joint owner and as such the property was part of the estate of the deceased. The administrators also vehemently opposed this application through the replying affidavit dated 2nd February 2015 sworn by Agnes Wairima Gathii who reiterated that the said property wholly belonged to the deceased.

4. While the respondent's application was still pending determination, the respondent obtained authorization from the Nairobi City County allowing her to carry out various paintwork and repairs on the property situated on Plot No.1-310 Mathare North. It is on the basis of this authorization that the respondent issued notice in a letter dated 20th August 2015 to all the tenants on Plot No.1-310 to vacate the property to enable her carry out the repairs. The said notice has brought about this current application filed under certificate of urgency dated 16th November 2015 seeking orders of temporary injunction stopping the respondent from evicting the tenants from Plot. No.1-310 Mathare North and maintain the status quo pending the hearing of the respondent's application dated 26th November 2014 and the hearing of the Succession Cause. The application is based on grounds that the property is subject of this succession cause which is yet to be determined; that the applicant, her children together with her mother in law are occupants of the said property and that the respondent's application dated 26th November 2014 is still pending in court.

5. A temporary injunction is issued in a suit to preserve the property in dispute or the rights of parties under determination in a suit pending the disposal of the suit (**EXCLUSIVE ESTATES LTD.-V- KENYA POSTS AND TELECOMMUNICATIONS CORPORATION & ANOTHER [2004] LLR 5917**). The conditions for granting temporary injunctions were enumerated in the often quoted case of **GIELA -V- CASSMAN BROWN AND COMPANY (1973) EA 358**. First, the applicant must show a *prima facie* case with a probability of success. Secondly, the applicant must satisfy the court that unless he is granted a temporary injunction, he/she may otherwise suffer irreparable injury which would not be adequately compensated by an award of damages. Lastly, if the court is in doubt then it will decide the application on the balance of convenience. The granting of a temporary injunction is an exercise of judicial discretion and the injunction seeks to protect an immediate threatened or contravened right which if no injunction is granted the applicant would suffer irreparable loss and the hearing of the matter would be an exercise in futility.

6. Though the Court at this stage is not able to say that the applicant has a *prima facie* case with a probability of success, I am convinced that it will cause the applicant irreparable harm if her prayer for temporary injunction is not granted. The balance of convenience favours the applicant rather than the respondent as she stands to suffer much injustice if evicted from the suit premises as compared to the respondent. It is on this basis that I allow the application dated 16th November 2015 and grant the following orders:

- a) a temporary injunction is hereby issued stopping the respondent Rose Wambui Njuguna from evicting the tenants from Plot No.1-310 Mathare North or in any way interfering with the property by painting or repairing and maintain the status quo as at the time of filing of the petition pending the hearing and determination of the Succession Cause.
- b) the area Chief and District Officer be served with these orders for compliance.

DATED at NAIROBI this 29TH JANUARY 2016

A.O. MUCHELULE

JUDGE

DELIVERED at NAIROBI this 1ST FEBRUARY 2016

W. MUSYOKA

JUDGE