

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

MISC. APPLICATION NO. 14 OF 2014

(IN THE MATTER OF THE ESTATE OF NJIRU KATHARA - DECEASED)

JULIUS MBOGO KATHARA.....APPLICANT

VERSUS

OBADIA MUTHEE NJIRU.....RESPONDENT

R U L I N G

The application dated 20/1/2014 seeks for orders of prohibition to be registered against LR. No. Gaturi/Nembure/2069 pending hearing and determination of summons for revocation of grant issued to the respondent in Runyenjes Succession Cause No. 125 of 2012. It also seeks to stay implementation of the grant by way of sub-division, transfer, waste or any other dealings including alteration of the current registration of LR. Gaturi/Nembure/2069.

The grounds supporting the application are threefold. Firstly, that the applicant is the son of the deceased Njiru Kathara and therefore a beneficiary in the estate. Secondly, the respondent was excluded in the distribution he has now filed summons for revocation which may be rendered nugatory if the orders sought are not granted. Thirdly, that the respondent is already in the process of implementing the grant he obtained in Runyenjes Succession Cause No. 125 of 2012.

The respondent filed a replying affidavit opposing the application. He argues that the respondent had already inherited from the deceased land reference No. Gaturi/Nembure/2542 measuring 5 acres and has already settled on the land.

By consent of the parties the application was disposed of by way of written submissions. The applicant was represented by the firm of Njeru Ithiga & Co. while Beth Ndorongo & Co. represented the respondent. The counsels filed written submissions on behalf of the parties.

I have carefully considered the application and the replying affidavit as well as the arguments of the parties in their submissions. It is not in dispute that the respondent in the Runyenjes Succession cause inherited all the assets of the deceased and excluded the applicant. The applicant has now applied for revocation of the said grant citing several grounds which include the jurisdiction of the court. The fear of the applicant is that the respondent is likely to dispose of the land which would render the summons for revocation useless.

Although the respondent argues that the applicant was aware of the succession cause, the allegations of disinheriting the applicant will only be decided upon determination of the summons for revocation. It is therefore appropriate to preserve the property in the interests of justice.

I find th application merited and I allow it as prayed.

It is hereby so ordered.

DATED, SIGNED AND DELIVERED AT EMBU THIS 12TH DAY OF MARCH, 2015.

F. MUCHEMI

JUDGE

In the presence of:-

Mr. Ithiga for Applicant

Mr. Nganga for Ndorongo for Respondent