



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
SUCCESSION CAUSE NO. 14 OF 1999

(IN THE MATTER OF THE ESTATE OF GEORGE MWENJA MUTHANGATO - DECEASED)

ALBERT MWANIKI KWENJA.....APPLICANT

VERSUS

JAMES MWIKAMBA NJAGI.....RESPONDENT

R U L I N G

This is an application dated 27/3/2014 by Albert Mwaniki Kwenja against the respondent James Mwikamba Njagi. It seeks for orders that this honourable court be pleased to grant leave to the applicant to apply for orders of prohibition and eviction of James Mwikamba from tea and coffee plantations which he has illegally taken possession of.

The application is based on the grounds that the respondent has contravened status quo orders issued in respect of farming settlement and utility of the estate of George Kwenja which orders were issued in this cause. It is alleged that on Wednesday 19/3/2014 the respondent and his two brother Njue Njagi and Nyaga Njagi cut throw Bibiana Ruguru's tea plantation's boundary. The applicant had depones that the respondent is illegally picking the tea of Bibiana Ruguru in the said portion of land which he has fenced off and that he is denying Bibiana Ruguru access to the area as well as income from the crop.

According to the applicant Bibiana lives on Ngandori/Nguvio/1353 belonging to the deceased on a portion of which has been invaded by the respondent. It is also alleged that in 2013 the respondent was given permission by the applicant's brother one Bernard Kiura to put up a house far from the tea and coffee plantation. The respondent has cut the tea bushes to create a path and he is also harvesting the tea and coffee on the disputed portion.

Bibiana is in poor health and takes care of her grandchildren using the income from the crops from the said portion. The tea plantation was a subject of a court case during the deceased's lifetime and Christopher Kwenja had no authority to give the respondent the said plantation.

The respondent was represented by Mr. Joe Kathungu who submitted that his client was substituted as a protestor in this case in place of his father Christopher Kwenja now deceased. The deceased (Christopher) had two wives who are the respondent's mother and Bibiana Ruguru. The respondent has occupied parcel No. 1353 all his life time. His late father was a son of the deceased and had shown the respondent the two portions that the administrator is complaining about. It is not true that the respondent and his brother invaded the said portions in March 2014. The respondent fenced his portion to separate it from that of Bibiana. The applicant is biased against the family of the respondent and favours one house of his late brother Christopher Kwenja.

The application seeks for leave to file judicial review proceedings for orders of prohibition. The issue that arises is whether judicial review orders can be issued against a private person like the respondent. In the case of **JACINTA WANJIRU RAPHAEL VS WILLIAM NANGULU – DIVISIONAL CRIMINAL INVESTIGATION OFFICER MAKADARA & 2 OTHERS [2014] eKLR** the issue for determination was whether judicial review orders can be granted against private individuals as opposed to public officers and authorities. The court declined to grant the orders for mandamus against the 2nd respondent which was a private limited liability company. The court cited with approval the case of **MUREITHI & 2 OTHERS (FOR MBARI YA MURATHIMI CLAN) VS ATTORNEY GENERAL & 5 OTHERS NAIROBI HCCA NO. 158 OF 2005*** where the court held that an order of prohibition is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. It lies not only for excess of jurisdiction or absence of it but also for a departure from the rules of natural justice.

It is my considered opinion that the leave sought should not be granted as it will lead to unnecessary and incompetent judicial review proceedings which may end up consuming precious judicial time.

This succession cause was filed in 1999 and it was joined with another Chief Magistrate Succession Cause of 1987 where the applicant was appointed administrator of the estate of George Kwenja Muthangato. These two cases are being heard together and are yet to be determined. Due to the ages of the two cases and the controversy involved therein the applicant and the beneficiaries should be focus to finalizing the mater which is part heard with a view of having the estate distributed.

The filing of an application after another contributes to prolonged delay of determination of this cause which is of no benefit to any of the beneficiaries to the estate.

It is my considered view that the application before the court is incompetent and it is hereby struck out.

Each party to meet their own costs.

DELIVERED, DATED AND SIGNED AT EMBU THIS 7TH DAY OF MAY, 2015.

F. MUCHEMI

JUDGE

In the presence of:-

Mr Kathungu for respondent

Applicant present