



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT NYERI.

SUCCESSION CAUSE NO. 555 OF 2013.

ESTON NJEGE ALIAS ECHITON NJEGE

GAKUI S/O KIOGOTHI ::::::::::::::::::::::::::::::::::::::: DECEASED.

RICHARD MURIUKI NJEGE ::::::::::::::::::::::::::::::::::::::: PETITIONER.

VERSUS

JANE WAMBUI NJEGE ::::::::::::::::::::::::::::::::::::::: 1ST OBJECTOR.

SAMUEL MWAI NJEGE ::::::::::::::::::::::::::::::::::::::: 2ND OBJECTOR.

AND

BENSON RUMURU MAINA :::::::::::::::::::::::::::::::1ST INTERESTED PARTY.

JOHN MWANGI MAINA :::::::::::::::::::::::::::::::2ND INTERESTED PARTY.

CHARITY WANGECHI MWAI:::::::::::::::::::::3RD INTERESTED PARTY.

BONFACE MUNYIRI NJEGE::::::::::::::::::::: 4TH INTERESTED PARTY.

STEPHEN MWANGI NJEGE:::::::::::::::::::::5TH INTERESTED PARTY.

ISABELLE WAKUNYU NJEGE ::::::::::::::: 6TH INTERESTED PARTY.

MOSES MUGO GICHINE ::::::::::::::: 7TH INTERESTED PARTY.

R U L I N G.

1. Mr. Muhoho, learned counsel represented the 1st, 2nd and 3rd interested parties, and the 1st objector. Mr. Kamwenji learned counsel represented the petitioner, the 4th, 5th, 6th and 7th interested parties. They relied on the affidavits deponed by their clients to make oral submissions in court.
2. The 1st objector and the 3rd interested party herein through a summons General form dated 16th February, 2015 sought orders from this court for:

(i) The petitioner, the 4th, 5th, 6th and 7th interested parties, their agents, servants and anyone claiming under them to be restrained from interfering with the 3rd interested party's occupation within the deceased's property IRIANI/KAGUYU/54 and IRIANI/KIAGUTHU/174 and further be restrained from purporting to subdivide apportion (sic) the deceased (sic) property IRIANI/KAGUYU/54 and IRIANI/KIAGUTHU/174 pending (sic) hearing and determination of this application and subsequently this case.

(ii) The honourable court to order that the objector Jane Wambui Njege to be reinstated within her previously occupied portions within the deceased (sic) property IRIANI/KAGUYU/54 and IRIANI/KIAGUTHU/174 which premises she was evicted by the 4th, 5th, 6th and 7th interested parties.

(iii) Costs be in the cause.

3. The said application is based on grounds that:-

(a) The 4th, 5th, 6th and 7th respondents are committing acts of waste on the deceased's properties namely IRIANI/KAGUYU/54 and IRIANI/KIAGUTHU/174 to the detriment of the interested party;

(b) The 4th, 5th, 6th and 7th interested parties are harassing the 3rd interested party by interfering with her quiet possession of beneficial share with the deceased (sic) property IRIANI/KAGUYU/54 and IRIANI/KIAGUTHU/174;

(c) The 4th, 5th, 6th and 7th interested parties are purporting to subdivide the deceased's (sic) property.

(d) The 4th, 5th, 6th and 7th interested parties have since unlawfully and (sic) ejected the 1st objector from the portion she was occupying at the time of her father's death.

4. The allegations in paragraphs (a) (b) and (c) are buttressed in the supporting affidavit deposed by the 3rd interested party, Charity Wangechi Mwai, the wife of Samwel Mwai Njege who was the 2nd objector in this case, before his death on 1st September, 2014.

5. The 3rd interested party further deposed that during his lifetime, her late husband and have been (sic) living and farming in the late 2nd objector's deceased father's property IRIANI/KAGUYU/54 and farming on IRIANI/KIAGUTHU/174.

6. In paragraph 6 of her affidavit, the 3rd interested party deposes that on or about 7th January, 2015, the 4th interested party cut down her tea bushes whereafter she made a report to the chief who reprimanded them (sic) and warned them (sic) against further acts of waste.

7. In paragraph 5 of her affidavit she deposes that upon the passing away of her husband, the 4th, 5th, 6th and 7th interested parties with a view to evict her, had started committing acts of waste, on the deceased's property and interfering with her quiet possession by trying to evict her and also purporting to subdivide the deceased (sic) property.

8. She further deposes that on 4th February, 2015, they cut down her tea bushes and started removing things from her house in a purported eviction and though (sic) unofficially purportedly subdivided the parcel of land IRIANI/KAGUYU/54. That she reported to the police station but was referred to the chief.

9. On her part, the 1st objector Jane Wambui Njege, deposed in her affidavit that she is a daughter of the deceased in this case. She deposed that throughout the life time of her late father, she was living in one of

his properties IRIANI/KAGUTHU/54 while also farming on IRIANI KIAGUTHU/174 and that she was thrown out of the property she used to live and farm in the year 2003 by the petitioner, 4th, 5th, 6th and 7th interested parties.

10. The 1st objector prays for reinstatement in the said parcel of land.

11. The petitioner Richard Muriuki Njege deposed an affidavit on his own behalf and that of the 4th, 5th, 6th and 7th interested parties. He deposed that the 3rd interested party is the wife of his late brother the 2nd objector, Samwel Mwai Njege. He further stated that the 3rd interested party, Charity Wangechi Mwai is still where her husband left her on parcel No. IRIANI/KIAGUTHU/54.

12. The petitioner deposes that Jane Wambui Njege, the 1st objector is not on any of the parcels of land; but it was the wish of the deceased that she settles on IRIANI/KIAGUTHU/174 and the petitioner the 4th, 5th, 6th and 7th interested parties have no objection to her moving to parcel No. IRIANI/KIAGUTHU/174. The petitioner deposed that the 1st objector's application to move to IRIANI/KIAGUYU/54 would interfere with the position on the ground as it would amount to displacing and eviction (sic) others already in occupation.

13. This court finds it rather curious that the 1st objector herein, Jane Wambui Njege has deposed in her affidavit that she was thrown out of the deceased's property where she used to live in IRIANI/KAGUYU/54 and farm in IRIANI/KIAGUTHU/174 in the year 2003 by the petitioner, the 4th, 5th, 6th and 7th interested parties.

14. Equity aids the vigilant, not those who slumber on their rights.

I find the said allegation by the said 1st objector to be untruthful in that she took no action to be reinstated in the said properties immediately after the alleged eviction. If the eviction occurred in the year 2003, the 1st objector only came into the picture on 8th August, 2013 when she made an application as a citor for letters of administration to be taken out in the estate of her deceased father. Thereafter, on 30th October, 2013, she objected to the petitioner herein being appointed the sole administrator of the deceased's estate.

She thereafter filed a petition by way of cross application on 1st November, 2013 seeking for the letters of administration to be issued jointly to herself and the petitioner.

15. It is for the foregoing reasons that I find the allegation that she was evicted from the deceased's property in the year 2013 as untruthful.

16. The petitioner, the 4th, 5th, 6th and 7th interested parties are however not against her moving to parcel No. IRIANI/KIAGUTHU/174.

17. I now move to the orders sought by the 3rd interested party herein, Charity Wangechi Mwai, who has shown that wanton waste is being committed on the deceased's estate. She has asserted that she was living and farming in the deceased's property before her husband, the deceased's son, Samwel Mwai Njege, the 2nd objector, died on 1st September, 2014.

18. The assertions contained in the 3rd interested party's affidavit is indicative of the fact the 4th, 5th, 6th and 7th interested parties are intermeddling with the deceased's property whereas the subject matter of this application is still subsisting. The record reveals that letters of administration for the deceased's estate have not been granted as yet.

19. Section 45 of the Law of Succession Act, Cap 160 prohibits parties from intermeddling with the property of deceased person. The said section provides as follows:-

(1) “Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.

(2) Any person who contravenes the provisions of this section shall:-

(a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment;

20. It is evident from the foregoing that any act that purports to dispossess or result into wastage of a deceased’s estate by a person who is not authorized by the law of succession or by any written law or by a grant of representation under the said Act amounts to intermeddling with the free property of a deceased person.

21. Rule 73 of the Probate and Administration rules reserve this court’s inherent jurisdiction in the following words:-

“Nothing in these rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

22. In addition, section 47 of the said Act gives this court jurisdiction to entertain any application and determine any dispute under the Act and to pronounce such decree and order as may be expedient. See the case of **Floris Pierro & another vs. Giancarlo Falasconi (as the administrator of the estate of Santuzza Billiotti alias Mei Santuzza) 2014 e KLR** . In that appeal, the Court of Appeal was of the firm view that **“Section 47 of the Succession Act gives the court all embracing powers to make necessary orders, including injunctions where appropriate to safeguard the deceased’s estate. This section must be read together with rule 73 of the Probate and Administration rules which further emboldens court’s jurisdiction to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of court. We would imagine such orders would also include injunctive orders”**

23. The application by the 1st objector and the 3rd interested party was anchored on the provisions of rule 73 of the Probate and Administration Rules under the Law of Succession Act.

This court therefore invokes the provisions of rule 73 of the foregoing rules and makes the following orders:-

(i) That the 1st objector, Jane Wambui Njege settles on land parcel No. IRIANI/KIAGUTHU.174 pending the determination of the succession cause herein. This should however not be construed as amounting to distribution of the deceased’s estate.

(ii) That the petitioner, the 4th, 5th, 6th and 7th interested parties, their agents, servants and anyone claiming under them are restrained from interfering with the 3rd interested party’s occupation within the deceased’s property IRIANI/KAGUYU/54 and IRIANI/KIAGUTHU/174;

(iii) That the petitioner, 4th, 5th, 6th and 7th interested parties, their agents, servants and anyone claiming under them are restrained from purporting to subdivide and/or apportion, the deceased’s property IRIANI/KAGUYU/54; IRIANI/KIAGUTHU/174 pending hearing and determination of the succession cause;

(iv) The Deputy Registrar is directed to give priority hearing dates to the 1st objector’s application dated 17th December, 2013; and

(v) Costs in the cause.

DATED and SIGNED at KAKAMEGA on this day of 2015.

NJOKI MWANGI.

JUDGE.

DELIVERED, DATED and COUNTERSIGNED at NYERI on this 13th day of October 2015.

J. MATIVO.

JUDGE.

In the presence of:-

..... For the 1st, 2nd, 3rd interested parties and the 1st objector.

.....For the petitioner and the 4th, 5th, 6th and 7th interested parties.

..... court Assistant.