



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION.

(SUCCESSION CAUSE NO 530 OF 1987 OF 2014 THIKA CM'S COURT)

SUCCESSION CAUSE 2346 OF 2013

MISCELLANEOUS 55 OF 2015

IN THE MATTER OF THE ESTATE OF KAHACHO MACHARIA (DECEASED)

RACHEL WANJIRU MWANGI APPLICANT

VERSUS

WAMBUI KARIRU..... RESPONDENT

RULING

1. On 22nd October, 2014, this Court heard the amended summons filed on 9th July, 2014 for inhibition, inhibiting the registration, charging transferring or any other dealing with respect to the proceeds of land known as **LOC1/KIRWARA/932, LOC1/KIRWARA/933 and LOC 1/KIRWARA/934** pending the hearing and determination of the objectors' application for revocation of grant dated 11th September, 2013. The application was heard ex parte and the orders granted on 7th November, 2014.
2. Rachel Wanjiru Mwangi granddaughter to the deceased filed an application under certificate of urgency on 8th April, 2015 that the Respondent Ms. Wambui Kariru wife to Danson Kariru wanted to buy her late husband on the land **LOC 1/KIRWARA/35 and LOC1/KIRWARA/932 LOC 1/KIRWARA/933 and LOC 1/KIRWARA/934** which land belonged to the late Kahacho Macharia, the Applicant's grandfather. The duty Court granted prohibitory orders that the late Danson Kariru was not to be buried on disputed land.
3. A temporary injunction was granted restraining Wambui Kariru from burying the deceased Danson Kariru on the suit property. A penal notice was issued.
4. On the death of the deceased's first wife Esther Wanjiku Kahacho who died on 11th May, 2015 as per the death certificate filed in Court, the applicant herein obtained letter of administration ad litem to act on her behalf in the present cause.
5. The Court record confirmed that the Respondent Wambui Kariru defied Court orders of 8th April, 2015 the orders to attend hearing interpartes of 16th April, 2015.

6. The Applicant came to the Court on 27th July, 2015 and sought enforcement of Court orders of 19th November, 2014 and they were not complied with.

7. The Court sought retrieval of the Court Files **Succession Cause No. 2346 of 2013** and **Succession Cause No. 530 of 1987 Thika C.M's Court.** and the matter was mentioned on 28th July, 2015. The Court ordered the application of 8th April, 2015 be heard on 21st September, 2015.

8. On 21st September 2015, the Respondent did not attend Court and in violation of Court orders, refused to accept summons, She did not send anyone to explain non appearance in Court, There is no explanation of any extenuating circumstances. Therefore, the Court issued a warrant of arrest which as of today as per the affidavit of service filed on 29th September, 2015, the Respondent declined to attend Court and the O.C.S Kirwara Police Station refused to have the said Respondent appear in Court.

9. I have perused the Court file **Succession Cause No. 53 of 1987** from **Thika Law Courts.** Therein is a ruling by Honourable Senior Resident Magistrate MS. B. A. Owino of 27th October 2010. The summon for confirmation filed by Esther Wanjiku Kahacho in 1991 were not confirmed due to the protest by one Danson Kariru Muiruri. The Court found clear evidence that the protestor bought one (1) acre land of the deceased's land **L.R. LOC1/KIRWARA/35** from the deceased himself during his lifetime.

The Protestor had in his possession the said 1 acre land from 1972 as the owner thereof. He developed the same as his homestead. The Court's distribution of the deceased's estate was as follows;

- a. Esther Wanjiku Kahacho - 3.3 acres
- b. Danson Kariru Muiruri - 1.0 acres

10. This matter came to light after the said file **Succession Cause 53 of 1987** was availed from **Thika Law Courts** and consolidated with **Succession Cause 2346 of 2013** respectively.

FINAL ORDERS:

In light of the fact that the judgment of the Court in Thika of 27th October, 2010, there is no appeal preferred or review before the said Court, this Court upholds the judgment. The warrant of arrests against Ms. Wambui Kariru widow to Danson Kariru (deceased) are withdrawn. Although the Court notes that she ought to have attended Court or sent emissaries to explain the circumstances and determination of the case by the Thika Law Courts. This Court dispenses with the application of 8th April, 2015.

11. What remains for hearing and determination in the present **Court File Succession Cause No. 2346 of 2013** is Summons for Revocation of grant application filed on 11th September, 2013 between the two (2) families of the deceased.

Parties to obtain a hearing date in the Registry for hearing interpartes of the application

READ AND SIGNED IN OPEN COURT AT NAIROBI THIS 5TH DAY OF OCTOBER, 2015

M. MUIGAI

JUDGE

In the presence of:

