



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

PROBATE AND ADMINISTRATION DIVISION

SUCCESSION CAUSE NO. 2685 OF 2011

IN THE MATTER OF THE ESTATE OF GEORGE GITHINJI KAMWAKI (DECEASED)

DAVID NDEGWA GITHINJI1ST APPLICANT

CHARLES MWANGI GITHINJI2ND APPLICANT

- Versus -

REGINA WAMBUI GITHINJI.....RESPONDENT

R U L I N G

1. In their Notice of Motion dated 23rd August 2013 brought under **Section 5(1)** of the **Judicature Act Cap 8 laws of Kenya**, the **High Court Practice and Procedures Rules Part 1 Rule 2, 3(1)** and **(3) Section 45, 47** of the **law of Succession Act** and **Rule 63, 73** of the **Probate and Administration Rules**, the Applicants David Ndegwa Githinji (1st Applicant) and Charles Mwangi Githinji (2nd Applicant) are seeking in the main, that the court do cite the Respondent herein for contempt of court and order him to serve six (6) months in civil jail.
2. The Notice of Motion is grounded on allegations that the court issued an order on 12th July 2013 in this matter and the same was served upon the Respondent on the same day. That despite the order being served, the Respondent has blatantly refused to comply with its provision, and restrain herself, her agents, servants, representatives or anyone acting under her instructions to excavate, dig, plough and deal with parcels of land known as **Ngong’Ngong’/25935 and Ngong’Ngong’/25938** thereby occasioning loss of life. That unless contempt proceedings are filed and the Respondent put in Civil Jail, she will put the authority and dignity of this court to disrepute.
3. The first Applicant has sworn an affidavit dated 23rd August 2013 in which he depones that through a case he commenced against the Respondent in this matter, he obtained preservative orders pursuant to his Notice of Motion application dated 9th July 2013 ordering the Respondent by herself, her agents, servants, representatives or anyone acting under her instructions to restrain from excavating, digging, ploughing and/or in any manner whatsoever dealing with the parcel of land known as **Ngong’Ngong’/25935 and Ngong’Ngong’/25938** until 30th September 2013.
4. The Applicant further avers that as a result of blatant refusal and/or breach of the said court order

the dangerous, illegal and uncontrolled activities of the Respondent, her agents, servants and/or otherwise have put the unsuspecting public at risk and led to the loss of life of one Daniel Mwendu Makau, a servant of the Respondent. That when the incident was reported under O.B. No. 8/1/8/13 at Gataka Police Station and in the course of investigation the police became aware of the court order, requested the Respondent to stop any activities in the said parcels of land. That despite the foregoing, the Respondent has to date not stopped excavating, digging, ploughing and dealing with the suit parcel of land. The Applicant therefore urged the court to exercise its discretion and commit the Respondent to civil jail since she poses a danger to the unsuspecting public.

5. The Applicants brought another Notice of Motion dated 21st January 2015 under the same provision, seeking that the court do issue an Order directing the Kajiado County Commander of Police, the Chief, Kandisi Ward, Kajiado North County and OCS Ongata Rongai to enforce the orders issued by the court on 12th July 2013 restraining the Respondent herein by herself, her agents, servants, representatives or any one acting under her instructions from excavation, digging, ploughing and/or in any manner whatsoever dealing with the parcels of land known as **Ngong’/Ngong’/25935** and **Ngong’/Ngong’/25938** pending the completion of the Succession process or until such further orders of this court.
6. The application was premised on the grounds that the court issued an order on 12th July 2013 which was duly served on the Respondent on the same day. That despite the order being served, the Respondent blatantly refused to comply with its provisions, and has continued to excavate, dig, plough and/or deal with the subject parcels of land. That the quarry recently collapsed and killed one person and injured scores of people. That the manner in which the Respondent is excavating the quarry there is a likelihood that there will be further risk of the quarry collapsing, a situation which in future will expose the undivided Estate of the deceased to risks of liability in Civil Claims.
7. The first Applicant has sworn an affidavit dated 21st January 2015 in which he depones that he initiated this case against the Respondent and they obtained preservative orders pursuant to their Notice of Motion application dated 9th July 2013 in which the Respondent was barred from any activities in the parcels of land. That the Respondent was served by a Court Process server. That the Respondent refused to comply as directed and continues to excavate, dig, plough the suit parcels of land.
8. The Applicant avers further that the Respondent’s actions are unlawful and deliberately done for her own selfish gain at the expense of the rest of the beneficiaries and risk of the estate being rendered less valuable or wasted in its entirety. That members of the family stand to suffer irreparable loss since the suit property consists of the most valuable of the undivided capital assets of the estate of the deceased. That it will be in the interest of justice that the orders prayed for are granted for the preservation of the estate of the deceased and to prevent further loss being suffered by the rest of the beneficiaries to the estate.
9. I have considered the grounds of the application before me together with the Replying affidavit. I note that there is no dispute that the court did issue orders dated 12th July 2013 as set out in paragraph 7 of this Ruling. I find however that the material placed before the court is not sufficient and is not such as can enable this court to make a finding with any degree of certainty, that there has been disobedience or compliance with the said court orders. There is no way of telling whether the activity in the exhibited photographs occurred before the orders were served as deposed by the Respondent or after service of the order as deposed by the Applicant.

In the premise the application is dismissed for want of merit. There are no orders as to costs.

SIGNED DATED and **DELIVERED** in open court this **4th day of November 2015**.

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L. A. ACHODE

JUDGE