



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO 606 OF 2010**

**IN THE MATTER OF THE ESTATE OF KARIUKI KAMINGIRAI alias JULIUS KARIUKI  
KAMINGIRAI (DECEASED)**

**JANE MUTHONI KIHOTO.....1<sup>ST</sup>  
APPLICANT**

**WINNIE NJERI KARIUKI .....2<sup>ND</sup>  
APPLICANT**

**VERSUS**

**FRANCIS NDUNGU KARIUKI.....  
RESPONDENT**

**RULING**

The Applicant(s) filed the following application;

- a. Summons for revocation and annulment grant application filed on 29<sup>th</sup> March, 2010.
- b. Application filed on 10<sup>th</sup> July 2015 for interlocutory injunction to restrain the Respondent from interfering in any way with the suit property Kiambu/Gatuanyaga /852.
- c. Application filed on 4<sup>th</sup> August, 2015 to have the matter heard as the Court did not proceed with the hearings on the last hearing date.
- d. Application filed on 26<sup>th</sup> August, 2015 seeking Court's intervention as the Respondent failed to comply with Court orders of 17<sup>th</sup> August, 2015.
- e. Application filed on 17<sup>th</sup> September, 2015 seeking the Court's intervention as the Court orders of 9<sup>th</sup> September, 2015 were not complied with.
- f. Application filed on 7<sup>th</sup> October, 2015 over orders issued to the Land Registrar in charge who could not comply with Court orders.
- g. The application filed on 2<sup>nd</sup> November, 2015 when the Respondent sneaks into the suit premises when the Police Officer have left after patrolling the place.

All these applications are pending and have not been heard *interpartes* to conclusively determine the bone

of contention.

The Court have issued the following orders pending *interpartes* hearing and determination.

- a. Orders by Hon. Justice L. Achode of 17<sup>th</sup> August, 2015 restraining the Respondent from interfering in any way with the suit premises.
- b. Order by Hon. Justice A. Muchelule of 9<sup>th</sup> September, 2015 to the effect that the Land Registrar in charge of Lands records to supply Court with copy of the green card of the suit premises and Court search certificate to the Applicants. The Court order was later confirmed by the OCPD Thika Sub County.
- c. Order by Hon. Justice M.W. Muigai of 26<sup>th</sup> October, 2015 to preserve the estate of the deceased under Section 45 of the Law of Succession Act Cap 160 until hearing and determination of the matter hearing of the annulment and revocation application of 29<sup>th</sup> March, 2010.

The Counsel for the Applicants informed the Court on 17<sup>th</sup> November, 2015 that the Respondent has declined to comply with all or any Court orders. With regard to the suit property which shall result in waste of the suit property. The Applicants allege that the Respondent has subdivided the land, sold to purchasers and construction is ongoing at an alarming speed so as to defeat any Court orders. The Respondent also demolished their home built by the deceased's brother to the Respondent and late husband to the 1<sup>st</sup> Applicant so as to conceal and defeat the Applicant's claim.

Therefore the Respondent committed to Civil Jail. The Respondent's Counsel informed the Court that the Applicant's claims are unfounded and unsubstantiated. The Applicants Counsel wrote to the tenant on the suit premises to evict him from the land. The Applicants were also alleged to have given to their property and demolished the fence and cut trees.

The matter ought to be heard and determined and in the meantime status quo be maintained. The Court scheduled *interpartes* hearing on 9<sup>th</sup> December, 2015 for the application filed on 29<sup>th</sup> March, 2015.

The filing of successive certificate of urgency application by the Applicants strongly suggests that wanton acts to waste the estate pending hearing is taking place; subdivision, sale, transfer and construction of permanent structures. All this intended to defeat the outcome of the hearing *interpartes*.

It is clear that the successive Court orders have not been complied with so as to protect and preserve the estate until the hearing *interpartes* on 9<sup>th</sup> December, 2015. The Court orders as follows;

- a. The OCPD Thika Police Station (East) to oversee and ensure that the Applicants and Respondents their agents and/or servants do not enter into the suit premises **KIAMBU/GATUANYAGA/852/KIAMBU/GATUANYAGA/5838**. Any entry to the deceased's estate without authority shall constitute a criminal offence order **Section 45 of Law Succession Act Cap 160**.
- b. The only activities to be undertaken during the interlocutory period are;
  - i) Those who reside on the said property.
  - ii) Those who cultivate the land for subsistence crops
  - iii) Those who look after the livestock.
  - iv) All construction of any development is halted forthwith.
  - v) All felling of trees and demolition or erection of fence is halted forthwith.
- c. The Applicants and Respondent shall not visit, enter, the suit premises as they do not reside on the

premises until the hearing scheduled on 9<sup>th</sup> December, 2015.

- d. No tenants/Purchasers shall build any structures, erect or demolish any fence, fell any tree(s), subdivide or sell, transfer, dispose or in any way interfere with the land or ownership rights beneficial interest until hearing and determination of the suit on 9<sup>th</sup> December, 2015.

**READ AND SIGNED IN OPEN COURT AT NAIROBI THIS 1<sup>ST</sup> DAY OF DECEMBER, 2015**

**M. W. MUIGAI**

**JUDGE**