



REPUBLIC OF KENYA

IN THE HIGH COURT AT KENYA

SUCCESSION CAUSE NO. 1067 OF 1994

IN THE MATTER OF THE ESTATE OF JAMES KARAYA KIRAGU

TREZA WANJIRU KARAYA.....APPLICANT

Versus

JAMES KIRAGU.....1ST PETITIONER

THOMAS KIRAGU KARAYA2ND PETITIONER

RULING

1. The applicant in her applicant dated the 30th of April 2015 seeks the following orders;

- a. That the Court grants a restriction order against dealings with parcel of land known as L.R. No. Aberdares Forest North/ Block 1/185. Laikipia / Ngobit/ Supuko block 2/663, Ihururu plot No. 47.
- b. She also seeks costs of the application.

The application is brought under Rule 73 of the Probate and Administration Rules.

2. The application is supported by the affidavit of the applicant. The Respondents did not attend the hearing of the application nor have they filed any reply to the applicant's affidavit.

3. In her affidavit dated the 30th of April 2015, the applicant avers that; the parcels of land No. L.R. No. Aberdares Forest North/ Block 1/185. Laikipia / Ngobit/ Supuko block 2/663, Ihururu plot No. 47 belonged to the deceased who is her father. That the petitioners have already transferred parcel land no. Laikipia/ Ngobit/ Supuko block 2/663 into the name of the 1st petitioner and are in the process of transferring the other parcels of the land. That no party has been issued with the confirmed letters of administration and that the petitioners actions amount to intermeddling with the estate of the deceased, that the petitioners actions will greatly prejudice the other beneficiaries of the estate as they stand to lose their inheritance.

4. I have gone through the court file I note the following. The deceased died on the 1^{9th} day of 1993 leaving behind 10 beneficiaries, being 3 widows, 4 sons and 3 daughters. The applicant was 5 years old then. The 2 petitioners /respondents were given authority to be the administrators. A grant of letters of administration with written will was issued to the 2 administrators on the 18th October 1994. One Agnes Muthoni Karaya cross petitioned on the 15th of July 1994. On the 6th January 1995, Agnes Karaya was also appointed as an administrator in addition to James and Thomas. On the 2nd of November 1995 the

grant of probate given on the 18th October 1994 was revoked , the petitioners were ordered to amend the petition by filing a petition for grant of letters of administration intestate. Directions were given on how the petition and cross petition were to be heard. The Court retained James, Thomas and Agnes as joint administrators.

5. The applicant on the demise of Agnes Muthoni Kiragu sought to be enjoined in the proceedings. On the 28th of May 2013 a grant of letters of administration ad litem was issued to the applicant. On the 16th July 2013, the applicant filed an application seeking to have a report on the deceased's assets, she also sought to have the court make a determination on equal assists distribution of all assets and that petitioners be restrained from disposing off any of the assets of the deceased estate.

6. From the handwritten proceedings which are quite tattered the matter proceeded to hearing before Justice Kuloba who heard the evidence of the petitioner Agnes Muthoni Karaya and her 3 witnessed namely Gregory Githingi Ndegwa Wanjohi Kairu and Muchunu Gachuki. James Kiragu Karaya and Thomas KIragu. The respondents too gave evidence, Thomas did not complete his evidence.

7. From what I have read and seen in the court I note that the grant that was issued to James, Thomas and Agnes has not been confirmed. Agnes who is said to have passed on too has not been substituted. It appears that the hearing before Justice Kuloba was to determine the mode of distribution. This matter was filed in court in 1994 , some 21 years ago the estate of the deceased is yet to be determined. The applicant is the daughter of the 3rd administrator who has since passed on. She seeks the restriction order against the properties she has mentioned in her applicant ion as she fears that the petitioners will transfer of alienate the said properties . She is a beneficiary of the deceased's estate. She has cited rules 73 which gives this court the inherent powers to make such orders as may be necessary for the ends of justice or to prevent abuse of the court process. She claims that amongst the properties mentioned the petitioners have transferred one Laikipia / Ngobit/Supuko block 2/663 into the name of the 1st petitioner and that they are in the process of transferring the other and to show the court that what she alleges has been done she has annexed a copy of official search dated the 3rd of March 2015. The proprietor is shown as Thomas Karaya the title was issued on the 22nd of December 2014. It is evident from the search that the deceased assets are being interfered with before confirmation of the grant. This application was not challenged. The applicant has demonstrated that an order of restriction is appropriate as of now. This court based on the material before it and having confirmed that grant has not been confirmed, grants the applicant a restriction order against dealings with parcels of land known as L. R. Aberdares Forest North/ Block 1/185, Laikipia/ Ngobit/ Supuko block 2/663, Ihururu plot no.47. The administrators shall comply with the orders given by Justice Kimaru on the 24th of June 2014 to give an inventory of the remaining assets within the next 60 days from the date of this ruling. Costs shall be in the cause. Orders accordingly.

Dated, signed and delivered on the 4th day of **December 2015**

R. E. OUGO

JUDGE

In the presence of :

.....For the Applicants

.....For the Respondents

Charity

Court clerk