



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
SUCCESSION CAUSE NO. 759 OF 2012
IN THE MATTER OF THE ESTATE OF THE LATE WANGAI MUGU MANYARA
PETER MBUGUA WANGAI..... APPLICANT
VERSUS
ESTHER WANGUI WANGAI RESPONDENT
RULING

1. The Applicant, **Peter Mbugua Wangai**, filed a Chamber Summons dated 2nd July, 2014. It is brought pursuant to **Section 47** of the **Law of Succession Act** and **Rule 59 & 73** of the **Probate and Administration Rules**. The Applicant prayed for the following Orders:-
 - a. **That this application be certified as urgent and be heard ex-parte in the first instance.**
 - b. **That interim orders of preservation of the deceased's estate comprised of all that parcel of land known as Title Number Nyandarua/South Kinangop/8542 being a subdivision of Title Number Nyandarua/South Kinangop/840 do issue against the Respondent pending the expiry of 90 days from 27/5/2014 within which the Respondent to distribute the Estate of the deceased and file report on distribution of the net estate of the deceased, restraining her, whether by herself, her agent, servants, employees and or any other person acting from her behest, from entering, subdividing, charging, alienating, disposing off, transferring or in any other way whatsoever interfering with the Applicant's possession thereof.**
 - c. **That pending the hearing and determination of this application inter-parte, this Honorable court be pleased to issue an interim order of preservation directed to District Surveyor, Nyandarua South and the County Lands Registrar, Nyandarua Lands Registry prohibiting them, either themselves, their agents, employees, servants, and or persons acting at their behest from entering all that parcel of land known as Title Number Nyandarua/South Kinangop/8542 being a subdivision of Title Number Nyadarua/South Kinangop/840 to undertake any activity therein, including subdivision, demarcation, and or delineation of any part or portion of the aforesaid Title Number Nyadarua/South Kinangop/8542 and to further restrain them from registering mutation, transfer and or charge of the resultant parcels from any subdivision of the aforesaid title.**
 - d. **That this Honorable Court be pleased to order the Officer Commanding Police Station, Kwa Haraka Police Station, to supervise compliance and or otherwise the enforcement of the orders (b) and (c) above.**
 - e. **That this Honorable Court be pleased to declare that the Applicant is the rightful heir or beneficiary and thereby entitled to in full, of all that parcel of land known as Title Number Nyadarua/South Kinangop/8542 measuring approximately 10 acres being subdivision of**

Title Number Nyadarua/South Kinangop/840.

- f. **That this Honorable court be pleased to order the Respondent to execute the necessary transfer forms in favour of the Applicant of all that parcel of land known as Title Number Nyadarua/South Kinangop/8542 being subdivision of Title Number Nyadarua/South Kinangop/840 and in default the same to be executed by the Deputy Registrar.**
 - g. **That's the costs of this application be provided for.**
2. The application is based on the grounds found on the face of the application and the affidavit of the Applicant sworn on 2nd July, 2014. The Applicant avers that by a ruling delivered by Hon. A. Emukule J. on 27th May, 2014, the Respondent herein was ordered to distribute the net estate of the deceased and report to court within 90 days from the date thereof. According to the deponent, the estate of the deceased was vast but the Respondent sold some of the properties. Consequently, it was agreed that amongst the beneficiaries that the remaining land being **Title Number Nyadarua/South Kinangop/840** be subdivided into nine portions and the resultant parcels be distributed amongst the beneficiaries. The Applicant herein was allocated **Title Number Nyadarua/South Kinangop/8542** which he occupies with his wife and six children.
 3. Sometime in May, 2014, the Respondent attempted to further subdivide the Applicant's portion of land. The Applicant reported the matter to Kwa Haraka Police Station and was referred to the Assistant County Commissioner, Magumu Sub-County. However the Respondent disregarded the summons issued and therefore the Applicant was apprehensive of a scheduled visit by the District Surveyor to undertake the sub division of **Title Number Nyadarua/South Kinangop/8542**.
 4. He further avers that the intention of the Respondent is to misapply the court ruling to disinherit the Applicant his rightful share of the estate of the deceased. He therefore seeks protection of the court against the Respondent intermeddling with his land and a further compell the Respondent to transfer the said land in his favour.
 5. In opposing the application, the Respondent filed Grounds of Opposition and a Replying affidavit both dated 9th July, 2014. She avers that the application is bad in law and unwarranted as it amount to appeal and or review of the ruling dated 27th May, 2014. Further the application and the orders thereof amount to the Applicant determining how the distribution will be done in place of the Respondent. That the application shall derail the entire distribution of the estate and the consequence is dire as the entire confirmed grant will be revoked.
 6. The Applicant was represented in this application by the learned counsel Mr. Ngunjiri whilst the Respondent was represented by the learned counsel, Mr. Muthanwa. Both counsel argued the application on 10th July, 2014 on behalf of their respective clients.
 7. Mr Njunjiri submitted that the purpose of the orders sought was to preserve the suit property from further subdivision pending the filing of the Report in court. He contended that the Respondent in total misapprehension of the court ruling purports to subdivide the suit land. The said ruling was to the effect that the Respondent distributes the net estate and files a report in court but not to undertake any subdivision.
 8. Further counsel submitted that it was agreed between the beneficiaries of the estate of the deceased that each son of the deceased would acquire 10 acres whilst each daughter receives 5 acres from the estate. However the Respondent having wasted her share of the estate now attempts to disinherit the Applicant his rightful share by causing his 10 acres to be further subdivided.
 9. In further submission, counsel contends that the application does not seek to review or appeal the ruling of the court delivered on 27th May, 2014 but to safeguard the interest of all beneficiaries in the matter and in particular the applicant herein.
 10. Mr. Muthanwa for the Respondent opposed the application and relied on the Grounds of Opposition, replying affidavit and the court record. He submitted that the application ought to fail because it is a replica of the Notice of Motion dated 9th November, 2012 which was determined by a ruling of the court delivered on 27th May, 2012. In its holding, the court ordered the distribution of the estate and the suit property forms part of the residue. He therefore submitted that the application should fail as the orders sought would interfere with the 90 days period given by the court.
 11. After hearing the submissions of both counsel this court makes the following observations ;
 12. First and foremost is that this court has taken the trouble to expound at length on the submissions

made for the better understanding of the issues arising.

13. There is a Ruling made by Hon. A. Emukule dated the 27th May, 2014 and a Report was to be filed in court within a window period of 90 days.

14. This court is of the view that this Report will capture and determine the Applicants entitlement.

15. Therefore I shall refrain from making a final determination on the instant application on its full import as it may directly be in conflict with the Report and will instead make the following Orders;

i. The interim order for preservation of Title No. Nyandarua/South Kinangop/8542 is hereby extended pending the filing of the Report in Court.

ii. Upon the Report being duly filed the matter be listed for mention before Hon. Emukule J who issued the Ruling for further directions.

iii. No order is made as to costs.

It is so Ordered.

Dated, Signed and Delivered at Nakuru this 3rd day of September, 2014.

A. MSHILA

JUDGE