



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
PROBATE AND ADMINISTRATION DIVISION
SUCCESSION CAUSE NO. 1273 OF 2013
IN THE MATTER OF THE ESTATE OF REUBEN WANJIHIA GACHAU (DECEASED)

EDWARD J. M. R. WANJIHIA & OTHERSAPPLICANT/PLAINTIFF

-versus-

FRANCIS GACHAU REUBEN & OTHERS.....DEFENDANT/RESPONDENT

RULING

1. The application before me is premised on the estate that was the subject matter of Succession Cause No. 11 of 1967. The said Cause was contested and the record in the register is said to indicate that it was confirmed on 29th March 1971 by Senor Resident magistrate at Kandara. On 4th June 2013 Edward J.M.R. Wanjihia the applicant herein, filed summons for revocation and/or annulment of the Letters of Administration granted therein, for reasons that the distribution of the estate of the deceased following the said grant of Letters of Administration, disinherited some of the rightful beneficiaries of the deceased.

2. On 20th January 2014 the Applicant brought this application under **Order 51 and Order 40 Rules 1,2,3,4,5,10 and 11 of the Civil Procedure Act & Rules Cap 21 Laws of Kenya, Article 159 of the Constitution of Kenya 2010 and Sections 19 & 20 of the Environment and Land Court Act, 2011**, under certificate of urgency. In this application the Applicant seeks orders that the rent accruing there from **LR. No. LOC. 3/GITHUMU 565/25**, which forms part of the estate of the deceased, should be deposited in a Trust Account to be operated by three (3) people to be appointed by the Registrar of the court, in consultation and consensus of the beneficiaries of the estate of the deceased.

3. Further, that pending the full hearing and determination of the application dated 4th June 2013 the Respondents/Defendants be restrained by a perpetual injunction from dealing with the estate and/or matters ancillary to the estate, in a manner detrimental and/or which renders it vulnerable to shrinkage, wastage and/or reduction of economic value.

4. This application is supported by the affidavit sworn by the Applicant on January 2014, in which he deponed that:

1. The Respondents/Defendants continue to enjoy the rental proceeds of **L.R. No. LOC.3/Githumu 565/25**, which remains and forms part of the estate of the deceased and which should benefit all the wives and Children of the deceased.

2. It is only fair, just and consonable that the Respondent/Defendants be restrained by this honourable court from doing any acts, or prejudicial acts that may detract the rightful heirs from pursuing real issues of placing the entire estate of the deceased on the table for fair and equitable distribution to all beneficiaries.

3. The rental proceeds from **LR No. LOC.3/Githumu 565/25** which forms part of the estate of the deceased be preserved for the benefit of all the beneficiaries of the estate and the proceeds thereof be banked in a Trust Account opened and operated by three beneficiaries of the estate appointed in consultation and consensus of all beholders of the estate aforesaid.

5. By an affidavit sworn on 23rd September 2013 Mr. Francis Gachau Reuben, a son of the deceased who is the Respondent deponed that the Applicant's supporting affidavit was drawn and commissioned by an advocate who did not hold a current practising certificate at the time and is therefore incompetent. He also averred that the Applicant is neither the Administrator of the estate, nor a beneficiary, nor a dependant and therefore has no capacity to bring the application. He further averred that he himself is not being the Administrator of the estate cannot be sued.

6. In my view the application dated 20th January 2014 is premature and ambiguous. It is premature in its prayer for perpetual injunction which can only be granted after a final hearing of a main application on its merit. It is also ambiguous because the said prayer for perpetual injunction is framed to state that it shall only remain in place pending the hearing and determination of the application dated 4th June 2013, which makes it interlocutory in nature.

7. Even if what was intended was an interlocutory injunction pending the hearing and determination of the application dated 4th June 2013, the conditions for the granting thereof must be satisfied. The principles upon which an injunction may be granted are first, that the Applicant has shown a prima facie case with a probability of success. Secondly, that he might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages if the injunction does not issue. Lastly, if in doubt the court will normally decide on the balance of convenience – See **Adalja v Hilton International (K) Ltd & Anor (1987) KLR pg. 624.**

8. From the facts deponed by the Applicant it is not evident that he has locus standi to bring this application for reasons that he has not established that he is an administrator of the estate or a beneficiary thereof or was a dependant of the deceased. It is also not clear in what capacity the Respondent has been sued since he denies that he was the Administrator of the estate in question. Succession Cause No. 11 of 1967 on which his application is premised was not annexed.

9. In any case his claim if any, in the estate can be quantified if indeed he has such a claim. The injuries to be suffered cannot therefore be termed as irreparable. The balance of convenience also does not operate in favour of the Applicant in view of the fact that the Grant impugned was issued forty-three years ago. The property has since been distributed and the beneficiaries have moved on with their lives.

10. Procedurally however there is no application before me since, on the face thereof, it is stated to have been drawn and filed by Michael W. Waikenya Esq., Advocate. The Respondent has annexed a copy of a letter from the Law Society of Kenya, in which it is stated that the above mentioned Advocate last held a valid practising certificate in the year 2012 having paid for it on 13th December 2012 and that he has not yet taken out a practising certificate for the year 2014. The said letter is dated 20th June 2014. This fact was not disputed. For that reason I hold the application drawn and filed by the Advocate named above on behalf of the Applicant to be invalid.

11. Those being my views in the matter, I hold that this application lacks merit and is accordingly dismissed with costs to the Respondent.

SIGNED DATED and DELIVERED in open court this **3rd day of November 2014.**

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L. A. ACHODE

JUDGE