



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
SUCCESSION CAUSE 156 OF 2008

IN THE MATTER OF THE ESTATE OF NJAUNGIRI RWALEDECEASED

AND

NGUBU NDONYI

JACKSON NDONYI KITHUMBU.....PETITIONERS/RESPONDENTS

VERSUS

REGINA WANJIRU MBUGWA.....1ST APPLICANT

BENSON WAWERU NJAUNGIRI2ND APPLICANT

HARRISON MURIUKI NJAUNGIRI3RD APPLICANT

CHARLES MURAGE NJAUNGIRI 4TH APPLICANT

JOHN GATIMU NJAUNGIRI5TH APPLICANT

RULING

This is the application dated 22/12/2011 brought under rule 73 P&A Rules of the Laws of Succession Act. The orders sought are;

- 1. That pending the hearing and determination of this application or until further orders of the Honourable Court, the Respondents by themselves, servants, agents or anyone claiming under them be restrained by way of temporary injunction from entering, cultivating, alienating, charging, leasing, evicting, remaining on or in any way unlawfully interfering with the Applicant's quiet possession and enjoyment of land parcels Nos. INOI/KIAGA/1504, 1505 and 1506 formerly LR No. INOI/KIAGA/83.***
- 2. That the Land Registrar Kirinyaga District be ordered to register a prohibitory orders to avoid any dealings over land parcels numbers INOI/KIAGA/1504, 1505 AND 1506 formerly L.R. Number INOI/KIAGA/83 by the Respondents pending the hearing and determination of this cause or until further orders of this Court.***
- 3. That pending the hearing and determination of the summons for revocation and/or annulment of grant filed herein, the Respondent be restrained by way of injunction from entering, cultivating, trespassing, alienating, evicting, charging, leasing or in any way interfering with the Applicants' quiet***

possession and enjoyment of land parcels Number INOI/KIAGA/1504, 1505 and 1506 formerly L.R. INOI/KIAGA/83 and the status quo in respect of the suit lands be maintained as they were prior to sub-division of L.R. INOI/KIAGA/83 into L.R. INOI/KIAGA/1504, 1505 and 1506 whereby the Applicants and the 1st Respondent Ngubu Ndonyi were in occupation.

4. That the costs of this application and other subsequent or consequent costs be borne by the Respondents.

The grounds are that there is a pending application for revocation of grant by the Applicant. They maintain that they did not participate in the issuance of the confirmed Grant which led to the subdivision of the land L.R. INOI/KIAGA/83 into INOI/KIAGA/1505, 1506 and 1506. The Applicants claim to have known of no other property besides the suit land. They say they reside there and cultivate the land. The land L.R. INOI/KIAGA has been sold to the 3rd Respondent. They fear that the land may be wasted and alienated to unsuspecting 3rd parties.

The supporting affidavit has been sworn by the 1st Applicant. The 3 Applicants are sons of the deceased NJAUNGIRI RWARE.

The Respondents have filed replying affidavits through which they deny the averments by the Applicants. They say the Applicants were well served with the processes herein and refused to come to Court.

Mr. Kahiga for the Applicants in his submissions states that the 1st and 2nd Respondents conspired to deprive the Applicants the right to their father's land. They claim they were not aware of the Succession Cause herein. The 2nd Respondent is a nephew to the deceased while the 1st Respondent is a brother. They say the Applicants and 1st Respondent have been in occupation of the land but are at the risk of being evicted.

Mr. Maina Kagio for the Respondents opposed the application. He says the 1st Applicant is the registered owner of L.R. INOI/KIAGA/1506 and the Respondents cannot alienate it. The Applicants have lodged cautions on land L.R. Number INOI/KIAGA/1504 and 1505. Their prayer for a prohibitory order is therefore not necessary. Further the 1st Respondent resides on that land. And the 3rd Respondent utilizes his portion of INOI/KIAGA/1504 and none of the applicants resides there.

Upon perusal of this file it comes out clearly that the deceased herein was the father of the Applicants. He was also a brother of the 1st Respondent and an uncle to the 2nd Respondent. The 3rd Respondent apparently bought the parcel No.1504 after subdivision of the land.

The confirmed Grant distributed the deceased's estate equally between;

1. NGUBU NDONYI
2. JACKSON NDONYI KITHUMBI
3. PETER MWANGI NJAUNGIRI

The first 2 beneficiaries are the 1st and 2nd Respondents. The 3rd beneficiary is the 1st Applicant herein. The Applicants think the Respondents were not entitled to a share in the deceased's estate hence the application for revocation of the Grant. From the averments herein all the parties herein claim to be in occupation of the land. This can't be possible. Its manifestly clear that there is a party/parties who are not sincere. They cannot all be living on the suit land as they claim. It is also evident that the old title in the deceased's name was closed upon subdivision. The new titles numbers INOI/KIAGA/1504 and 1505 are in the names of the Respondents while number 1506 is in the name of the 1st Applicant. Is it therefore true that the Applicants are in occupation of numbers 1504 and 1505? Annexure "PMN4" also indicates

that there is a caution lodged on number 1504. However it is not clear what the position is on number 1505.

From the few facts before this Court it is curious to note that $\frac{2}{3}$ of the deceased's estate was inherited by people who are not his children yet he is survived by several sons and daughters. It is therefore important that the main application for revocation be heard for the reasons to be established. However without the establishment of who is living and cultivating where the issuance of restraining orders would be an exercise in futility. This is because this Grant was confirmed on 24/9/2009 and a lot as taken place.

It must however be noted that it is the duty of this Court to preserve the estate of a deceased person against those bent on intermeddling with it. In light of the foregoing I find it prudent to direct that the status quo be maintained. And the status quo is that those currently in possession of the three parcels of lands numbers 1504, 1505 and 1506 should not be disturbed until the main application is heard and determined.

Secondly those in whose names the parcels numbers 1504, 1505 and 1506 are registered should not alienate or dispose of the same until this matter has been heard and determined.

The application only succeeds to the extent indicated above. Costs in the Cause.

DATED AND DELIVERED AT EMBU THIS 11th DAY OF OCTOBER 2012.

H.I. ONG'UDI

J U D G E

In the presence of;

Mr. Kahiga for Applicant

Mr. Maina Kagio for Respondent

Njue – C/c