



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC CASE NO. 36 OF 2016

SHELMITH WACUKA NDUMU

(Suing as the Legal Representative of

**MWAURA MBIRA Alias NDUMU
MBIRA.....PLAINTIFF/APPLICANT**

VERSUS

WANJIRA MWAURA.....1ST DEFENDANT/RESPONDENT

RAHAB MWERU MWAURA..... 2ND DEFENDANT/RESPONDENT

TERESIAH WANJA NYAGA.....3RD DEFENDANT/RESPONDENT

ALICE WANJA MWAURA.....4TH DEFENDANT/RESPONDENT

STEPHEN MAINA MWAURA.....5TH DEFENDANT/RESPONDENT

JOSEPH MURIMI MBIRA.....6TH DEFENDANT/RESPONDENT

(Sued in his own capacity and as next friend to

L N & M N (MINORS)

PATRICK MBIRA MWAURA.....7TH DEFENDANT/RESPONDENT

PETER GACHOKI MWAURA.....8TH DEFENDANT/RESPONDENT

HENRY MUGO MWAURA.....9TH DEFENDANT/RESPONDENT

KABIRA MWAURA.....10TH DEFENDANT/RESPONDENT

PETER MUNENE MWAURA.....11TH DEFENDANT/RESPONDENT

RULING

This is in respect to the following two applications:-

1. The plaintiff's Notice of Motion dated 9th March 2016 premised under Order 40 Rule 1 and 2 of the Civil Procedure Rules seeking the main remedy that a temporary injunction be issued restraining the defendants by their servants, agents, employees or anyone acting through them from selling, disposing, transferring and/or charging land parcels No. BARAGWE/GUAMA/3391, 3392, 3393, 3394, 3395, 3396, 3397, 3398, 3399, 3400 and 3401 and all developments thereon pending the hearing and determination of this suit.

The same is premised on the grounds set out therein and supported by the plaintiff's affidavit in which she has deponed, inter alia, that she is the daughter of the late **MWAURA MBIRA Alias NDUMU MBIRA** and files this suit on behalf of his Estate having obtained letters of administration a copy of which is annexed – SWN

1. That her late father owned land parcel No. BARAGWE/GUAMA/409 when he died on 11th February 2012 after which the defendants who are the deceased's wives and children colluded and portioned the land which they shared among themselves thus dis-inheriting other members of the family. That all this was done fraudulently.

That application is opposed and the defendants have filed grounds of opposition challenging the plaintiff's locus in filing this suit on the basis that the limited grant Ad litem that she obtained on 14th December 2015 was obtained fraudulently and is the subject of revocation proceedings in **KERUGOYA HIGH COURT SUCCESSION CAUSE No. 668 of 2015** and therefore these proceedings ought to be stayed until the issue of plaintiff's locus is determined.

2. The defendants' Notice of Motion dated 14th April 2016 premised under the provisions of Section 6 of the Civil Procedure Act seeks the substantive order that this Court be pleased to stay these proceedings pending the hearing and determination of an application for revocation of the Limited Grant of letters of Administration Ad litem issued to the plaintiff in KERUGOYA HIGH COURT SUCCESSION CAUSE No. 668 of 2015. The said application is supported by the affidavit of ALICE WANJA MWAURA the 4th defendant herein who has deponed that she is the administratrix of the Estate of the deceased MWAURA MBIRA Alias NDUMU MBIRA having obtained letters of Administration on 22nd October 2012 in KERUGOYA HIGH COURT SUCCESSION CAUSE No. 144 of 2012. That the plaintiff who is a stranger to that Estate fraudulently and through concealment of material facts obtained a limited Grant Ad litem to the same Estate despite knowing that there was another Succession Cause. That the matter in the Succession Cause should be given priority.

The plaintiff has filed a replying affidavit in response to that application in which she had deponed, inter alia, that she is not a stranger to the Estate of the deceased **MWAURA MBIRA Alias NDUMU MBIRA** who was her late father and she is the daughter of the 3rd wife **RAHAB MWERU MWAURA** who is the 2nd defendant. That the 4th defendant filed **KERUGOYA HIGH COURT SUCCESSION CAUSE No. 144 of 2012** without the knowledge of all the beneficiaries and therefore her mother filed a parallel Succession Cause No. 310 of 2013 over the same Estate. That she has moved to this Court because the 4th defendant in collusion with other family members have transferred her late father's land to themselves and it is for that reason that she obtained the letters of Administration limited for purposes of this suit and therefore she cannot be accused of fraud or concealment of material facts since she has made a disclosure of the two Succession Causes in her plaint. That it is not therefore true that the letters of Administration ad litem were obtained un-procedurally or illegally and therefore the application to stay these proceedings should not be granted.

Written submissions have been filed by both **Ms WANGECHI** advocate for the plaintiff and **Mr. NGANGAH** advocate for the defendants.

I have considered the two applications, the rival affidavits and annexures thereto as well as the submissions by counsel.

The following are not in dispute:-

1. The plaintiff obtained a limited Grant ad Litem on 14th December 2015 in KERUGOYA HIGH COURT SUCCESSION CAUSE No. 668 of 2015 limited only for purposes of filing suit.

2. That grant is the subject of revocation proceedings on the basis that it was obtained fraudulently when the plaintiff knew that the 4th defendant had obtained letters of Administration in respect to the same Estate in KERUGOYA HIGH COURT SUCCESSION CAUSE No. 144 of 2012.

3. That the 4th defendant obtained a Grant of letters of Administration in respect to the same Estate on 24th October 2012 in KERUGOYA HIGH COURT SUCCESSION CAUSE No. 144 of 2012.

The plaintiff brings this suit in her capacity as the legal representative of the Estate of her late father **MWAURA MBIRA Alias NDUMU MBIRA**. She can only have the capacity to do so if she is the legal representative of the said Estate. A legal representative of a deceased person is equivalent to a personal representative who is defined in the Law of Succession Act Section 3 as the personal representative who is the executor or administrator as the case may be of the deceased person. An administrator is defined as the person to whom a grant of letters of administration has been made. It is therefore clear that a legal representative is a person to whom a grant of letters of administration has been made under the Law of Succession Act. The plaintiff has been granted a Limited Grant Ad Litem for purposes of filing this suit. The same has been challenged as having been obtained fraudulently. This Court is not in a position to rule on the validity or otherwise of the limited grant issued to the plaintiff. Indeed this Court must recognize it unless there is reason to doubt it in which case, the locus of the plaintiff to file this suit will be impugned. In the circumstances of this case, since this Court is informed that the Limited Grant Ad Litem obtained by the plaintiff is being questioned in another Court, it would be prudent to put these proceedings on hold until that issue is resolved. This is because, should this Court give audience to the plaintiff and the Limited Grant Ad Litem issued to her is subsequently revoked, then this Court will have allowed a party who has no locus to abuse the process of the Court. A Court should never do that. Counsel for the plaintiff has submitted that the defendant's application is meant to delay this case. I don't think so. The issues raised regarding the plaintiff's locus are quite weighty and ought to be resolved. It is better to delay and do the right thing rather than to rush and do the wrong thing. If the plaintiff indeed has no locus standi, to file this suit, then that means that she cannot be heard even on whether or not she has a case worth listening to.

Ultimately therefore and having considered all the issues herein, I make the following orders:-

1. The proceedings in this case are stayed pending the hearing and determination of an application for revocation of the Limited Grant Ad Litem issued to the plaintiff in KERUGOYA HIGH COURT SUCCESSION CAUSE No. 688 of 2015.

2. This case be further mentioned on 1st November 2016 so that the Court can be informed about the progress in the High Court Succession matter and make further directions.

3. Each party to meet their own costs.

B.N. OLAO

JUDGE

11TH OCTOBER, 2016

Ruling delivered, dated and signed in open Court this 11th day of October 2016.

Mr. Ngangah for Defendants present

Ms Wangechi for Plaintiff absent.

B.N. OLAO

JUDGE

11TH OCTOBER, 2016