



**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**ENVIRONMENT AND LAND COURT CASE NO. 58 OF 2014**

KINYUA KOECH LTD ..... 1ST PLAINTIFF  
EDWIN WAMBAA REGERU ..... 2ND PLAINTIFF  
GEORGE WAIYAKI  
(Suing through the 2nd plaintiff) ..... 3RD PLAINTIFF

**VERSUS**

NAIROBI HOMES (MOMBASA) LTD. .... 1ST DEFENDANT  
WINGFIELD NG'ANG'A REGERU ..... 2ND DEFENDANT  
CATHERINE NYANGUI REGERU ..... 3RD DEFENDANT  
ESTHER WANJA REGERU ..... 4TH DEFENDANT  
EMMA MUTHONI WAMBAA ..... 5TH DEFENDANT  
PAULINE WANJIKU WAMBAA ..... 6TH DEFENDANT  
VIRGINIA WANJIRU KIREGA ..... 7TH DEFENDANT  
STEPHEN KAGECHE REGERU ..... 8TH DEFENDANT  
JOSEPH KABATI REGERU ..... 9TH DEFENDANT  
DENNIS WAMBAA REGERU ..... 10TH DEFENDANT  
DANSON MUCHUGIA REGERU ..... 11TH DEFENDANT  
PIUS WAITHAKA REGERU ..... 12TH DEFENDANT

**RULING**

[1] Kinyua Koech, Edwin Wambaa Regeru and George Waiyaki suing through the 3rd defendant filed this application on 17th March, 2014 under certificate of urgency. They prayed that the defendants be restrained by themselves, their servants and agents from entering into or being on LR No. Mombasa/block XX/281 pending the hearing of this application among other prayers in the application aforesaid.

[2] The grounds for the said application were that the the first plaintiff manages the said LR. No. Mombasa/Block XX/281 under a five year property management contract which commenced on 1st February, 2012 and is still in force. That the said contract was entered into by the legal representatives of the late proprietor of the said plot one Lawrence Regeru Wambaa now deceased. It is further argued that by virtue of Section 79 of the Law of Succession Act the ownership of a deceased property vests in his legal representatives. It is stated that the 1st applicant collects over Kshs. 850,000 monthly rent and pays it to the Legal Representatives of the deceased. It is also argued that the defendants are trespassers who have invaded the premises. These are among the reasons given to support this application. The application is supported by an elaborate affidavit of Rosemary G. Muriuki the property manager of the 1st plaintiff. In her affidavit she explains in detail how the plaintiff manages the property, how that management was purportedly terminated by the defendants and how the first defendant was purportedly appointed as Manager and all her staff in the said property thrown out from the premises. In her affidavit she attached various annexures and court cases by the parties hereto in various courts.

[3] The application came before me on 19th March, 2014 *ex parte*. I granted prayers 3,5,7 and 9. I ordered that the application be served and be heard *inter partes* in 14 days.

[4] On 31st March 2014 the 1st to 12th defendants filed an application under certificate of urgency praying that this court vacates, sets aside or vary the *ex parte* orders given on 19th March, 2014. In that application the defendants /applicants applied for an Order that the rental income collected from the suit property described as LR. No. Mombasa/Block XX/281A be deposited in an escrow account in the names of all the owners in a bank to be agreed upon. The application was grounded on the fact that the Order was obtained through concealment of material facts and that the plaintiff/applicant misled the court into granting the said Order. That the order was in contravention of the Orders given in **Nairobi Succession Cause 2051 of 2007. In the matter of the Estate of Lawrence Wambaa Regeru.** That the 2nd - 12th defendants are the landlords of the suit property. The final ground was that it was in the interests of justice that the file be placed in the Nairobi High Court Family Division for hearing and final determination.

[5] The application was supported by the affidavit of Emma Muthoni Wambaa. In her affidavit she said the suit property was one of the assets of the estate of Lawrence Regeru Wambaa which was subject to **Nairobi Succession Cause No. 2051 of 2007.** That distribution of the said estate was done by the High Court In Nairobi on 23rd October, 2013. That the suit property was vested on the 2nd to 12th defendants. That she had been appointed as administrator of the estate of the deceased with the 2nd plaintiff on 28th day of July, 2008. She stated that she can no longer purport to represent the owners of the suit property in light of the final Orders issued by the High Court. She averred among other reasons that the 1st plaintiff has been unable to discharge his managerial duties.

[6] I have carefully read and considered the suit filed herein. I have been asked to make various declarations set out therein. The basic one being that the 2nd to 12th defendants lack legal authority to appoint the 1st defendant a manager of LR. No. Mombasa/Block XX/281. That the defendants entry therein amounts to trespass and that they have committed torts therein. I am supposed to restrain the 2nd to 12th defendants from interfering with the running of the suit property.

[7] The pertinent question here is, who is the owner of this premises after the death of the owner Lawrence Regeru Wambaa? After the death of the deceased, a succession suit was filed in Nairobi as **Succession Cause No. 2051 of 2007.** From the documents availed to the court by the defendants the administrators of the deceased estate were appointed by the Court. These were the 2nd plaintiff herein and the 5th defendant. The estate was finally distributed by the court on 1st October 2009. A certificate of confirmation of Grant was issued. The grant was rectified on 23rd October 2013. In that confirmation of grant the owners of the suit property are clearly identified. They are the 2nd and 3rd plaintiffs and the 2nd to 12th defendants herein.

[8] After confirmation of the grant Sec. 83 (g) of the Succession Act Cap. 160 mandates the trustees/administrators to complete the administration of the estate in respect of all matters (other than continuing trust) and produce to court a full and accurate account of the completed administration. This

period may be extended by the court. The administrators should have filed all their reports by 22nd April 2014. I have not been told whether this was done and the report filed in the Succession Cause. However, this can only be an issue in that Succession Cause. The administrators had 6 months to finalise their management after the final distribution by the court. Could the administrators enter into a contract of 5 years on 1st February, 2012 with a third party to manage the premises when their contract was expiring on 22nd of April, 2014? Are the owners not entitled to enter their premises after the expiry of the 6 months the statutory period of management and even appoint another manager? These are some of the lingering questions in this matter. In any case, the two administrators have now disagreed, one is the 2nd plaintiff the other is the 5th defendant. What does the succession law say on such an issue?

[9] Williams Mortimer and Sunnucks on Executors, Administrators and Probate chapter 3 states;

*"An executor maybe appointed solely, or in conjunction with others but in the later case all are considered in law as individuals persons and, in general, the acts of one of them, done for purposes of administration, are deemed to be acts of all of them. However all executors must concur in dealings with interests in land"*

In Relangley English Reports Volume III quoting in **Re Taylor 2 Rob Ecc 410 the court said:**

*"The court always discourages joint administration, but when persons take themselves to that office, they must put up with the inconvenience that ensue; they cannot act separately"*

The law clearly says the administrators must act together. If they do not act together like in this case one must go back to the succession court for further orders on administration. The issues herein clearly arise from a succession cause aforesaid. The ownership of the subject matter to the suit property is not in dispute. The same having been determined by the succession cause and a final grant having been done and eventual distribution of the deceaseds' estate done. To my mind, once a succession court has distributed the estate the file is closed unless it is opened up by any of the beneficiaries after the filing of the report by the administrators.

[10] This court is set up by the Constitution for determining disputes relating to the environment, use and occupation of, and title to land. There is no dispute as to use, or occupation here. The title to the property was decided by the succession court at Nairobi which distributed the estate. The orders the applicant prayed for in the application dated 17th March, 2014 cannot therefore be granted.

I am equally unable to transfer this case to Nairobi Family Division as requested by the defendants. Nairobi Succession Cause No. 2051 of 2007 is finalized. The Estate of the deceased was distributed by the Court vide the rectified grant on 23rd day of October, 2013. The end result is that the application filed on 17th March, 2014 and the application dated 27th March, 2014 are all dismissed with no Order as to costs.. Any party is at liberty to move the court for further Orders in regard to the suit filed herein. It is so ordered.

**Dated and delivered in open Court at Mombasa this 2nd day of July, 2014.**

**S. MUKUNYA**

**JUDGE**

**2.7.2014**

In the presence of:

Mr. Asige advocate for the plaintiff/applicant

Mr. Mogaka Advocate for Mrs. Wambugu advocate for the respondent

Mr. Kaburu advocate for 1st defendant