



IN THE COURT OF APPEAL

AT NYERI

(CORAM: VISRAM, GATEMBU KAIRU & ODEK, J.J.A.)

CIVIL APPLICATION NO. 5 OF 2014

BETWEEN

MWONGERA MUGAMBI RINTURI 1ST APPLICANT

FESTUS GUANTAI MUGAMBI 2ND APPLICANT

AND

FLORENCE IMATHIU RESPONDENT

Being an application for inhibition of dealings by the sole administratrix with all properties in the estate of the deceased till determination of pending appeals in Nyeri Civil Appeal No. 277 of 2010 and Civil Appeal No. 32 of 2013.

RULING OF THE COURT

1. Before us is a Notice of Motion application under certificate of urgency dated 18th February, 2014, brought pursuant to **Section 68 of the Land Registration Act and Rules 42 & 43 of the Court of Appeal Rules**. The applicants are seeking orders from this Court to stop and inhibit any dealings by the Sole Administratrix with all the properties comprising of the estate of the deceased “Paramenus Mugambi” and in particular **Land Parcel No. NTIMA/IGOKI/943**, which has been sub-divided into nine (9) parcels namely Nos. **8268-8276** – until the determination of **Nyeri Civil Appeal no. 277 of 2010** and **Civil Appeal No. 32 of 2013**.
2. In support of the application, the applicants state that there are two pending appeals before this Court challenging the judgment on distribution of the estate of Paramenus Mugambi vide **Civil Appeal No. 32 of 2013** and **Civil Appeal No. 277 of 2010**, challenging the ruling that appointed the respondent as the administratrix of the estate of the deceased.
3. The genesis of this application is a family dispute over the estate of the deceased Paramenus Mugambi. The 1st applicant is a step brother to the respondent while the 2nd applicant is brother to the respondent. The High Court (*Emukule, J.*) in **Meru Succession Cause No. 213 of 1997**, made orders distributing the estate of the deceased and appointed the applicants as administrators of the estate. The applicants have challenged the distribution of the estates as ordered by the **High Court in Civil Appeal No. 32 of 2013**. By a ruling delivered in High Court Succession Case No. 213 of 1997 by the Hon. Justice Kasango, the appointment of the applicants as administrators of the

- estate of the deceased was annulled and the respondent was appointed the administratrix of the estate. The appellants have challenged the said ruling vide **Civil Appeal no. 277 of 2010**.
4. The ground upon which the applicants are seeking inhibitory orders as deposed to in the supporting affidavit of Mwongera Mugambi Rinturi dated 18th February, 2014, is that it has come to the knowledge of the applicants that the respondent has already transferred most of the estate of the deceased to herself and she has proceeded to sub-divided some of the properties into numerous plots with intent to transfer the same to third parties. For this reason, the applicants state that it is in the interest of justice for a conservatory order of inhibition to be granted to stop any dealings or transactions with **Land Parcel No. Ntima/Igoki/943**, which has been sub-divided into nine parcels.
 5. The applicants filed an additional affidavit in support of the application deposed to by the 1st applicant. In the affidavit, it is deposed that the respondent made an application before the High Court seeking to rectify the grant and in the said application stated that the estate of the deceased had been fully administered and distributed. The applicants deny that the estate of the deceased has been fully administered and distributed.
 6. The respondent filed a replying affidavit in opposition to the application for inhibitory orders. The gist of the respondent's opposition is that the estate of the deceased had been holistically administered and distributed as mandated by the High Court and that the respondent had neither plundered, stolen nor wasted any part of the estate as claimed by the applicants. It is stated that the prayer for inhibitory orders against **Land Parcel No. Ntima/Igoki/943**, should not issue as the said parcel no longer exists as it was sub-divided and the resultant titles have been distributed.
 7. At the hearing of the instant application, the applicants were represented by learned counsel **M. M. Kioga** while the respondent was represented by learned counsels **A.G. Riungu & Gikunda Anampiu**.
 8. Counsel for the applicants emphasized that the present application for inhibitory orders is to stop any dealings with the property of the deceased until the hearing and determination of the two pending appeals. It was submitted that the respondent administratrix had depleted the estate of the deceased and exhibited open inclination to dispose the estate. Counsel stated that the respondent administratrix has been distributing the estate despite existence of the pending appeals. That this position is confirmed by the respondent in her replying affidavit where she has deposed that the estate has been distributed. Counsel submitted that the pending appeals shall be rendered nugatory if inhibitory orders are not granted.
 9. Counsel for the respondent in opposing the application stated that the estate of the deceased has been administered in accordance with the grant as confirmed by the High Court. That there was no evidence tendered in the present application which demonstrate that the estate of the deceased has been wasted or plundered. That the applicants made a similar application to the instant one by way of **Civil Application No. 22 of 2010**, which application was considered and dismissed by Court. Counsel submitted that in any event, the applicants are seeking inhibitory orders pending the hearing and determination of **Civil Appeal No. 277 of 2010** and **Civil Appeal No. 32 of 2013**. It was submitted that these two appeals were due for hearing before this Court on the same date as the present application and as such, granting of inhibitory orders will serve no purpose as the appeals are due for hearing.
 10. We have considered the application before us and the replying affidavit as well as submissions by counsel. As pointed out in this Court's decision in **Equity Bank Limited -vs- West Link MBO Limited, - Civil Application No. 78 of 2011**, a stay order is designed to empower this Court to entertain interlocutory applications for preservation of the subject matter of the pending appeal in order to ensure the just and effective determination of appeal.
 11. In the instant case, the applicants seek inhibitory orders pending the hearing and determination of **Civil Appeal No. 277 of 2010** and **Civil Appeal No. 32 of 2013**. **Civil Appeal No. 277 of 2010**, has been heard; an application to strike out **Civil Appeal No. 32 of 2013**, as being incompetent has also been heard before this Court. For this reason, it is our considered view that inhibitory orders as prayed for by the applicants will serve no purpose as the pending **Civil Appeal No. 277 of 2010**, which made the respondent administratrix of the estate of the deceased has already been heard.
 12. Further, we note that an administrator of the estate of a deceased person is a trustee and should administer the estate subject to the supervision of the High Court. The applicants have not

demonstrated to our satisfaction that the respondent has administered the estate in contravention of the terms of grant of letters of administration. Mere allegations of wastage of the estate do not suffice to prove the same. For the foregoing reasons, we find no merit in the Notice of Motion application dated 18th February, 2014, and the same is hereby dismissed. This being a family dispute, each party shall bear his/her own costs.

Dated and delivered at Nyeri this 28th day of May, 2014.

ALNASHIR VISRAM

.....

JUDGE OF APPEAL

S. GATEMBU KAIRU

.....

JUDGE OF APPEAL

OTIENO-ODEK

.....

JUDGE OF APPEAL

I certify that this is a

true copy of the original.

DEPUTY REGISTRAR