



REPUBLIC OF KENYA



In re Estate of David Mbugwa Kariuki alias David Mbugua Kariuki (Deceased) (Succession Cause E475 of 2023) [2024] KEHC 15540 (KLR) (Family) (26 June 2024) (Ruling)

Neutral citation: [2024] KEHC 15540 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE E475 OF 2023
EKO OGOLA, J
JUNE 26, 2024**

BETWEEN

MARY NJERI MBUGUA APPLICANT

AND

JOSEPH NJIHIA KARIUKI RESPONDENT

RULING

1. The Summons before the court is dated 8th March 2023. The applicant prays for the following orders:-
 - a. Spent;
 - b. That this honorable court be pleased to issue an inhibition against any transaction relating to the property known as Nairobi/Block/105/1710 pending the hearing and determination of this application;
 - c. That this honorable court be pleased to preserve all the properties that comprise the estate of the deceased particularly: Nairobi/block/187/989; Gilgil/Karunga/block 2/134; Machakos/Matuu/7440; Machakos/Matuu/7436; Nairobi/block/105/1710; and Ndalani block 1/2186 pending the issuance of confirmation of grant over the deceased estate.
 - d. That the court do make such orders or further orders as it may deem fair and just in the interest of justice.
 - e. That the costs of this application be in the cause.
2. The Summons were based on the grounds set out therein and the applicant's supporting affidavit. The applicant deposed that the deceased was survived by three widows. The first widow is Margaret Njeri, and she had five children with the deceased. The second widow is herself, and she had two



children with the deceased. The third widow is Rahab Ng'ang'a. According to the applicant, one Joseph Njihia, the deceased son from the first house is in the process of selling the property known as Nairobi/block/105/1710 which is her matrimonial home where she has been residing since 1994.

3. The applicant further deposed that the deceased allegedly left a Will that failed to bequeath her any of the deceased assets. Therefore, she will be challenging the said Will.
4. The applicant deposed that she has requested the first widow and his children to provide the relevant documents to initiate succession proceedings but they have refused to do so. She further stated that since she does not have the title to Nairobi/block/105/1710, she has been unable to apply for a Caution over the said property.
5. It is for these reasons that she prays that the deceased assets be preserved until a Certificate of Confirmation of Grant is issued.
6. There is an affidavit sworn by Christopher Mbugua, the applicant's son. He is in support of the application. He deposed that he also lives in Nairobi/block/105/1710.
7. In the applicant's supplementary affidavit, she averred that Joseph Njihia has been threatening to sell the said property and has further brought potential purchasers to the property.
8. In response to the application, Joseph Njihia Kariuki filed a Replying Affidavit. He deposed that Nairobi/Block/105/1710 is registered in the name of the deceased. He stated that succession proceedings have not been initiated. He further stated that he had no intention of disposing of any of the deceased assets. Mr. Kariuki deposed that the deceased left a valid Will where he did not leave any asset to the applicant.
9. Parties were directed to canvass the application by way of submissions.

Determination

10. I have considered the application, the rival affidavits and submissions. The applicant prays for a temporary injunction against the respondent or any of the beneficiaries of the deceased estate from dealing in any way with the assets of the estate more so Nairobi/block/105/1710.
11. Section 47 of the *Law of Succession Act* provides:-

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.

Provided that the High Court may for the purpose of this section be represented by Resident Magistrates appointed by the Chief Justice.”
12. On the other hand, Rule 73 of the Probate and Administration Rules provides that: -

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”
13. The aforementioned provisions cloth the High Court with wide discretion to do what is necessary to ensure that the ends of justice is met. In the case of Millicent Mbatha Mulavu & another v Annah Ndunge Mulavu & 3 others [2018] eKLR the court affirmed that the two provisions grant the High



Court powers to issue protective measures including injunctions for purposes of preserving the estate of a deceased person.

14. Furthermore, in *Floris Piezzo & Another –vs- Giancarlo Falasconi* (2014) eKLR, the Court of Appeal while considering whether an injunction can be issued in a Succession Cause expressed itself as follows;

“... The question which arose and had to be determined first was whether the Court had jurisdiction to grant an injunction in a Succession Cause.

The appellants took the position that the Court had no such jurisdiction whereas the Respondent took the contrary position. However, the High Court was persuaded that Rule 73 of the Probate and Administration Rules reserved the Court’s inherent jurisdiction to allow for the grant of injunctions in deserving cases. We are in total agreement with this conclusion. We have no doubt at all that the *Law of Succession Act* gives the Court wide jurisdiction in dealing with testamentary and administration issues of an estate. Indeed Section 47 of the said Act gives the Court jurisdiction to entertain any application and determine any dispute under the Act and to pronounce such decree and orders as may be expedient. It cannot be said that such decrees and orders would exclude injunction orders. In other words, we are of the same view that Section 47 of the Act gives the Court all-embracing powers to make necessary orders, including injunctions where appropriate to safeguard the deceased’s estate. This section must be read together with Rule 73 of the Probate and Administration Rules which further emboldens Court’s jurisdiction to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of Court. We would imagine such orders would also include injunctive orders.”

15. The upshot of the foregoing is that the High Court has jurisdiction to issue all manner of orders including the issuance of conservatory and/or injunctive orders that are appropriate, to preserve and safeguard, the estate of a deceased.

16. It is common ground that for an injunction to be issued, the applicant must satisfy the three requirements settled in *Giella v Cassman Brown* [1973] EA 348 where the court held that an applicant must demonstrate that they have a prima facie case with a probability of success, demonstrate irreparable injury which cannot be compensated by an award of damages if a temporary injunction is not granted, and if the court is in doubt, show that the balance of convenience is in their favour.

17. Furthermore, in *Nguruman Limited v Jane Bonde Nielsen and 2 Others* NRB CA Civil Appeal No. 77 of 2012 [2014] eKLR the Court of Appeal reiterated the three conditions to be fulfilled before an interim injunction is granted as set out in *Giella v Cassman Brown* (supra) and further clarified that the conditions are to be applied as separate, distinct and logical hurdles which an applicant is expected to surmount sequentially. Consequently, if the applicant does not establish a prima facie case then irreparable injury and balance of convenience do not require consideration. On the other hand, if a prima facie case is established, then the court will consider the other conditions.

18. What then constitutes a prima facie case? The Court of Appeal in *Mrao Ltd v First American Bank of Kenya Limited and 2 Others* [2003] eKLR explained that it is,

“A case in which on the material presented to the Court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party to call for an explanation or rebuttal from the latter.”

19. Therefore, a prima facie case is not frivolous but one which is easily discernable from the pleadings even before the party is heard as it will show a right exists which may be infringed if an injunction is



not issued and the onus of establishing the existence of a prima facie case lies with the applicant. In the instant application, the applicant and her son have deposed that they are in occupation of Nairobi/block/105/1710 and if an order of injunction is issued they may be rendered homeless. Furthermore, there is a Will annexed to the application showing that the applicant has not been bequeathed anything. She deposed that she intends to challenge the validity of the Will once Succession proceedings have been formally instituted.

20. Without conducting a mini-trial, I am satisfied that the applicant has established a prima facie case that if orders sought are not granted, she is likely to suffer harm and loss that cannot be compensated by damages.
21. From the foregoing, I hereby allow the Summons dated 8th March as prayed. The beneficiaries are directed to petition the court for letters of grant of administration of the deceased estate to preserve the estate and to avoid the estate being waster. Costs be in the cause.

Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 26TH DAY OF JUNE 2024

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E.K. OGOLA

JUDGE

In the presence of:

Ms. Macharia for the Applicant

Mr. Njoroge for the Respondent

Gisiele Muthoni Court Assistant.

