



REPUBLIC OF KENYA



**KENYA LAW**

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**In re Estate of Loise Waringa Njuguna (Deceased) (Succession Cause  
103 of 2018) [2022] KEHC 10866 (KLR) (23 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 10866 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
SUCCESSION CAUSE 103 OF 2018**

**RB NGETICH, J**

**JUNE 23, 2022**

**IN THE MATTER OF THE ESTATE OF LOISE WARINGA NJUGUNA - DECEASED**

**IN THE MATTER OF**

**JANE GATAA KAHARE ..... APPLICANT**

**RULING**

1. The applicant filed notice of Motion dated 24<sup>th</sup> June 2021, seeking the following orders:
  - a. The applicant be enjoined as an interested party to these proceedings.
  - b. The costs of this application be in the cause.
2. Grounds on the face of the application is that on 11<sup>th</sup> May 2016, the applicant entered into a sale agreement with Stephen Wanjoya Njuguna for the sale of a parcel known as L.R. Gilgil/ Gilgil Block 1/ 3xxx (Kekopey) where she paid a deposit of Kshs. 512,000/= and is willing to pay the balance of the purchase price to the family of Stephen Wanjoya. Stephen Wanjoya who died before he completed the sale; that the sale was on the strength that Stephen was a son of the Deceased Loise Waringa and he had filed succession in Limuru Succession Cause 224 of 2016.
3. The applicant in her further affidavit sworn on 25<sup>th</sup> April, 2022 averred that the property known as Gilgil/Bilgil Block 1/3xxx (Kekopey) does not form part of the deceased estate as the same was not listed in the deceased will.
4. She averred that each beneficiary to the estate of the deceased Loise was in actual possession of the parcels and the title deeds and each was at liberty to use the inherited property. She further averred that other beneficiaries independently commenced and concluded succession proceedings in different succession proceedings.
5. In support of the application, Anthony Kamau Njuguna swore an affidavit on 15<sup>th</sup> March 2022. He averred that he is the brother of the late Stephen Wanjoya and he was aware that the deceased had sold



his parcel no. Gilgil/Gilgil block 1/3xxx (Kekohey) to the applicant and that he was a witness to the said transaction. He further stated that the wife of the deceased Virginia Wanjiru was aware of the transaction.

6. The application is supported by the annexed affidavit of Jane Gataa Kahare, reiterating the grounds of the application.
7. In response to the Application, Sarah Waithira Njuguna filed a Replying Affidavit sworn on 21<sup>st</sup> February 2022. She averred that the application is defective, bad in law and frivolous. She contends that the family is not aware of any transactions and the deceased Loise had distributed her estate before her death and all beneficiaries had been allocated each a specific portion where they occupied and developed. She stated where the deceased Stephen was allocated parcel No. Gilgil/Gilgil Block 1/3xxx (Kekohey) but is not aware on the filing of Limuru Succ Cause no. 224 of 2016.
8. According to her, all the beneficiaries are in agreement with the mode of distribution by the deceased.
9. She urged the court to dismiss the application as the applicant is a total stranger to the estate of the deceased herein.
10. Directions were on 22<sup>nd</sup> February 2022 taken to have the application canvassed by way of written submissions. only the Respondent's submissions were in the court file.

### **Respondent's Submissions**

11. Counsel for the Respondent Virginia Wanjiru filed submissions on 25<sup>th</sup> April, 2022 and submitted that the property is still registered in the name of the deceased Loise and as such Anthony could not enter into a sale agreement without a grant of representation.
12. Counsel submitted that the application before court is a non-starter, incompetent and incurably defective and ought to be struck out as the same has been brought through notice of motion rather than chamber summons which is fatal in law and cited the case of *Paul Muchuki Gakibe v Philip Kamau Gakibe* (2008) eKLR where the court held that

“it is evident that the Probate and Administration Rules do not specifically cater for applications for stay of executions, but Mr. Karanja was of the view and rightly so, that the applicant ought to have moved the court under rule 49 of Probate and Administration rules, which provides that “a person desiring to make an application to the court relating to the estate of a deceased person for which no provision is made elsewhere in these Rules shall file summons supported if necessary by affidavit.” In view of the above, the application is thus incompetent and I strike it out with costs.”
13. According to counsel, the proposed interested party has no stake in the matter before the court and further submitted that the deceased Stephen Wanjoya is not a beneficiary of the estate of the deceased and thus could not enter into a sale agreement. The alleged transaction is not binding on the Estate and thus the applicant has no stake in the matter before the court.
14. Counsel further submitted that the impugned transaction contravenes Sections 45 and 82 of the *Law of Succession* as the purported seller had no good title to sell the property and cited the case of *in re Estate of Barasa Kanenje Manya (deceased)* Succ cause No. 263 of 2002 (2020) KEHC 1 (KLR) 30<sup>th</sup> July 2020 where it was held as follows:-

“the deceased's son had no property to sell and he conferred no good title to the purported buyer. The transaction was unlawful and amounted to a criminal offence according to



Section 45 of the Law of Succession Act. That he was subsequently appointed administrator of the estate did not help him, nor salvage the transaction, since the deceased had died intestate, and by dint of Section 80 of the Law of Succession Act, a grant of letters of administration intestate did not relate back to the date of death, so as to authenticate any of the acts of the administrator, done between the date of death and the date of appointment, the transaction of May 26 2003, was as dead as a dodo.”

15. Counsel further submitted that Anthony Kamau Njuguna is not a beneficiary of the deceased as the real name of the beneficiary is Anthony George Kamau Njuguna. The applicant is not a creditor to the estate of the deceased Loise Waringa; and further submitted that the only remedy available to the applicant is suing the beneficiaries of Anthony to recover the land or for a refund of the monies paid.
16. Counsel further submitted that this court lacks the jurisdiction to determine an issue relating to ownership of land as the same is within the purview of the Environment and Land Court and the interested party will suffer no prejudice if not enjoined as a party to the suit; the applicant has not shown the prejudice she will suffer if not enjoined in the suit and further, there is no evidence showing the payment of Kshs. 512,000/= by the applicant in the purchase of the property.
17. That as per the sale agreement, the purchase price is Kshs. 1,400,000/= and the applicant only paid a sum of Kshs. 283,400/= contrary to the alleged payment of Kshs.512,000/=
18. And further submitted that the applicant is guilty of laches. That she slept on her rights as the Petition in Limuru Succ Cause No. 224 of 2016 was filed 5 months after the execution of the agreement but applicant contacted the estate of the deceased 4 years later.
19. In conclusion, counsel urged the court to disallow the application as the same would prejudice the true beneficiaries of the estate of the deceased.

### **Analysis And Determination**

20. Issues for determination are:-
  - 1) Whether the application should be struck out for being defective.
  - 2) Whether the applicant should be enjoined as an interested party in the Succession Cause.

#### **(i) Whether the application should be struck out for being defective**

21. Counsel for the respondent submitted that the application be struck out as it is defective on the basis it has been brought through a notice of motion rather than chamber summons.
22. I note that Rule 49 of Probate and Administration rules provide as follows:-

“a person desiring to make an application to the court relating to the estate of a deceased person for which no provision is made elsewhere in these Rules shall file summons supported if necessary by affidavit.”
23. I however note that Order 2 Rule 14 of Civil Procedure Rules provide that no technical objection may be raised to any pleading on the ground of any want of form.



24. In *DT Dobie Co Ltd vs. Muchina* [1982] KLR 1 on page 9 Madan, JA, (as he then was) he stated as follows:-

“No suit ought to be summarily dismissed unless it appears so hopeless that it plainly and obviously discloses no reasonable cause of action and is so weak as to be beyond redemption and incurable by amendment. If a suit shows a mere semblance of a cause of action, provided it can be injected with real life by amendment, it ought to be allowed to go forward for a court of justice ought not to act in darkness without the full facts of a case before it.”

25. Striking out is a serious step that deny a party opportunity to be heard and court will resort to if the suit filed is hopeless or abuse of the court process. In view of order 2 rule 14 and guided by the above authority, I will not strike out the notice of Motion filed by the applicant on ground of technicality but instead invoke Rule 73 which provide for the inherent powers of the court to make an order for the interests of justice to be met.

**(ii) Whether the applicant should be enjoined as an interested party.**

26. The applicant contends that on 11<sup>th</sup> May 2016, she entered into a sale agreement with Stephen Wanjoya Njuguna for the sale of a parcel known as L.R. Gilgil/ Gilgil Block 1/ 3xxx (Kekopey), she contends the parcel was still registered under the deceased name Loise Waringa Njuguna and the same was pending succession.

27. I have looked at the sale agreement dated 11<sup>th</sup> May 2016 attached herein between Stephen Wanjoya and Jane Gataa at the execution of the agreement the Applicant did pay a sum of Kshs. 283,400/= there is an acknowledgement dated 3<sup>rd</sup> June 2016, she paid a further sum of Kshs. 65,500/=. The vendor filed a petition for letters of administration in respect to the estate of Loise in Limuru Succ cause no. 224 of 2016.

28. The applicant wishes to be enjoined as interested party by virtue of having purchased the above parcel from a beneficiary of Loise Waringa Njuguna.

29. “Interested party” is defined in The *Black’s Law Dictionary* 10<sup>th</sup> Edition defines Page 1298 as follows:-

“A party who has a recognizable stake (and therefore standing) in a matter”

30. The applicant contends she has a recognizable interest in the matter as a creditor of the estate of the deceased.

31. A party may be said to have a recognizable interest in a matter if the outcome of such matter or proceeding is likely to adversely affect their interest. The question before the court is whether the applicant will be prejudiced by the outcome of the matter.

32. I do concur with the sentiments of Gitari J. in the case of *AMM v JMN* [2019] eKLR where the Judge stated: -

“An interested party is one who has a stake in proceedings, though he was not a party to the cause ab initio. He is one who will be affected by the decision of the Court when it is made, either way. The Court should not act in vain by enjoining a party that clearly would have no interest in the subsequent proceedings”



33. The Respondent on the other hand avers that the Vendor Stephen Wanjoya had no right to sell the property to the applicant. They contend they will be prejudiced if the applicant is enjoined to the suit; the applicant averred no prejudice will be suffered by the beneficiaries.
34. In succession matters, creditors are likely to be affected by the outcome of the matter and therefore fit in the definition of interested parties.
35. There is no doubt that the interest of the applicant will be affected by the outcome of the succession matter. She is therefore an interested party.
36. Final Orders:
  1. Application dated 24th June 2021 is hereby allowed.
  2. No orders as to costs.

**RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KIAMBU HIS 23RD DAY OF JUNE, 2022**

.....

**RACHEL NGETICH**

**JUDGE**

**In the Presence of:**

**Kinyua – Court Assistant**

**Ms. Mbiri holding brief for Ngige for Applicant**

**Ms. Nasimiyu for Virginia beneficiary**

