



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUNGOMA

SUCCESSION CAUSE NUMBER 3 OF 2020

(Formerly Kitale Hc. Succession 30 of 2015)

IN THE MATTER OF ELIZABETH MARA WIFE OF KOLONGO

(DECEASED)

MARY OBISWA KOLONGO.....APPLICANT/RESPONDENT

VERSUS

JANE MIGARUSHA KOLONGO.....1ST RESPONDENT

BOARD OF MANAGEMENT SANGO SECONDARY &

PRIMARY SCHOOLS.....2ND RESPONDENT/APPLICANT

RULING

This is application dated 4th June 2020 by the Applicant Board of Management Sango Secondary and Primary Schools seeking orders;

- (a) **That** pending hearing and determination of this application inter partes there be an interim order of stay of execution of the ruling and or orders of Hon. H.K. Chemitei J. issued on 28.5.2020 directing that parcel No. Bungoma/Naitiri/183 be registered in the joint names of the two administrators.
- (b) **That** pending hearing and determination of this application inter partes there be an order of status quo in respect of ground occupation and use by the parties.
- (c) That order of Hon. H.K. Chemitei J vesting land parcel Bunngoma/Naitiri/183 as part of the estate of Elizabeth Mara w/o Korongo be set aside, vacated and or reviewed forthwith.
- (d) **That** the order issued by Hon. H.K. Chemitei on 28.5.2020 directing that Land Parcel LR No. Bungoma/Naitiri/183 be registered in the joint names of the two administrators be reviewed, varied or set aside forthwith.

The grounds for the application are that there are errors apparent on the record particularly that the court made an order for the Land subject of the application Bungoma/Naitiri/183 to the estate of deceased Elizabeth Mara, when the same was registered in the name of Settlement Fund Trustee; that the court did not have jurisdiction to handle the matter when the same is preserve of the Environment and Land Court; and finally that the order to vest the suit land in the names of the beneficiaries of the estate of Elizabeth Mara was premature and therefore the status quo existing before the ruling of the Hon. Justice Chemitei should be maintained.

Briefly Elizabeth Mara Kolongo the deceased was the registered owner of Land Parcel Bungoma/Naitiri/183. She died on 13.1.1975. Mary Obiswa Kolongo and Jane Mingarusha Kolongo were wives of the sons of the deceased, thus making them daughters in-law of the deceased. Jane Mingarusha Kolongo so applied for grant of letters of administration to the estate. Mary Obiswa Kolongo objected to her exclusion in the estate, and by order dated 25.5.2020 Chemitei J. both Mary and Jane were appointed Co-administrators of the Estate. The learned Judge then directed that the land be vested in the names of the two administrators of the estate.

The Board of Management Sango Secondary and Primary School objected to such vesting of land in the administrators names, claiming that the deceased had surrendered the said land to the school and was therefore not part of the estate of the deceased and was not available for distribution.

The learned Judge appreciating these rival submissions directed;

In the premises, putting all the factors constant in the interest of justice this court make the following orders;

- (a) The applicant herein MARY OBISWA KOROGO is hereby enjoined as a joint Administrator of the estate of the deceased herein the grant issued on the 17th October 2018 is hereby amended to that fact.**
- (b) The land parcel number BUNGOMA/NAITIRI/183 shall be registered in the joint names of the two administrators.**
- (c) The parties are hereby advised to pursue legal redress in terms of the actual ownership of the suit land at the Environment and Land Court.**
- (d) This cause is hereby transferred to Bungoma High Court and any other subsequent proceedings regarding the estate shall be filed at the said High court which is within the geographical jurisdiction of the suit land.**
- (e) Pending the outcome of order (c) above the Applicant is hereby allowed to continue in occupation and to utilize a portion she has been utilizing measuring about 3.5 acres in land parcel number Bungoma/Naitiri/183 and the County Police Commander Bungoma to ensure compliance of this order.**
- (f) Each party shall bear its own costs.**

Chemitei J. appreciated that the main issue for determination is who was the owner of the land Bungoma/Naitiri/183, before the deceased died on 13.1.1975. The appropriate forum for resolving this issue of ownership of Bungoma/Naitiri/183 is the Environment and Land Court.

I therefore direct that the file be and is hereby transferred to the Bungoma ELC Court for determination on the issue of ownership of the subject parcel of land.

This matter be mentioned before Olao J. on 8.2.2021 for directions.

Dated and Delivered at Bungoma this 28Th day of January, 2021

S.N. RIECHI

JUDGE