



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

(Coram: Odunga, J)

SUCCESSION CAUSE NO. 840 OF 2010

IN THE MATTER OF THE ESTATE OF NZIOKI MWATU (DECEASED)

NICOLAS MUTUNE.....PETITIONER/APPLICANT

-VERSUS-

VERONICAH MUTUNGA.....RESPONDENT

RULING

1. On 5th November, 2019, I delivered a ruling in this cause in which I dismissed an application by the Respondent herein in which the Respondent sought leave to come on record of these proceedings as an interested party to these succession proceedings. In my ruling I held that the Respondent, having based her claim on a transaction that was unlawful could not seek to come on record in these proceedings.
2. By an application dated 11th June, 2020, the Applicant seeks an order that the Court issues an injunction restraining the Respondent from cultivating, cutting trees, making bricks or in any other manner interfering with the land known as Muthetheni/Kionyweni/76 and find her guilty of intermeddling and punish her accordingly.
3. According to the Applicant herein, the Respondent and 3rd parties acting under her have entered the land again, cut trees and prepared land in preparation for making bricks. In his supplementary affidavit the Applicant herein denied that the Respondent has been in occupation of the suit property.
4. In response to the application the Respondent averred that she is a purchaser for value of the estate of the deceased having purchased 4 acres of land from the estate of the deceased which were to be excised from the subject land herein. The said agreement was entered into between the Respondent and the Applicant's father, a beneficiary of the estate of the deceased. According to him, the said transaction was entered into with the knowledge of the Applicant herein, who supported his father in selling the said land in order for the Applicant to get school fees. It was therefore contended that the applicant lacks legal and moral ground to seek any remedy from this court as his father was the first person to intermeddle in the Estate.
5. According to the Respondent, since 1992 she has been in possession of the suit property where she has been carrying out her activities without interruption from the Applicant. It was her position that she was not aware that she was intermeddling in the Estate of the deceased. In her view, she has acquired interest in the said land byway of adverse possession having been in occupation thereof for over 12 years without any interruption. She however indicated that she had no problem with the status quo being maintained until the succession cause is finalised.
6. In his supplementary affidavit the Applicant herein denied that the Respondent has been in occupation of the suit property.
7. I have considered the application, the supporting affidavit and the submissions filed. From the Applicant's submissions, it is clear that the Applicant is but just one of the Petitioners of the Estate of the deceased herein. In **Willis Ochieng Odhiambo vs. Kenya Tourist Development Corporation & Another Kisumu HCCC No. 51 of 2007**, it was held by **Mugo, J** that:

“In the case of co-trustees of a private trust, the office is a joint one. Where the administration of the trust is vested in co-trustees they all form as it were one collective trust and therefore must execute the duties of their offices in their joint capacity...Although a strict definition of “trustee” does not apply to personal representatives who hold property upon trust for the estate, the legal responsibilities and liabilities of executors and administrators of estates are the same and are treated similarly where matters of procedure are in issue.”

8. It therefore follows that the Applicant alone cannot take any action in respect of the estate without joining all the petitioners.

9. Apart from that, the substantive order sought by the applicant is that this Court ought to find the Respondent guilty of intermeddling. Such a finding being criminal in nature cannot be made in these proceedings. If the Applicant has evidence of intermeddling, he should make appropriate complaint for determination of the same.

10. Consequently, the application dated 11th June, 2020 is incompetent and is hereby struck out but with no order as to costs.

11. It is so ordered.

Read, signed and delivered in open Court at Machakos this 22nd day of February, 2021.

G V ODUNGA

JUDGE

Delivered in the presence of:

Mr Mutinda Kimeu for Mr D M Mutinda for the applicant

CA Geoffrey