



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NUMBER 138 OF 2000

IN THE MATTER OF THE ESTATE OF JOHN KIPSANG MARITIM (DECEASED)

SELINA CHEPTERER MARITIM APPLICANT

VERSUS

GRACE C. MARITIM RESPONDENT

RULING

1. Before me is the Notice of Motion dated 10th February 2020 brought by Selina Chepterer Maritim, under **Sections 1A, 1B and 3A of the Civil Procedure Act, Order 51 rule 1 of the Civil Procedure Rules and Section 24 of the National Police Service Act**. She seeks the orders;

1. THAT this application be and is hereby certified as urgent and the service hereof be dispensed with in the first instance.

2. THAT this honourable court be pleased to order the OCS, Kaptembwo Police Station, the OCS Kericho Police Station, OCS Kapsoit Police Station and OCS Sosiot Police Station to supervise and provide security during subdivision of the land parcels stated herein below:

a) MITI MINGI/MBARUK BLOCK x/xxxx and MITI MINGI/MBARUK BLOCK x/xxxx – OCS KAPTEMBWO POLICE STATION.

b) RHONDA PLOT NO. NAKURU/MUNICIPALITY xx/xxx and land parcel RHONDA PLOT NO. NAKURU/MUNICIPALITY xx/xx, OCS KAPTEMBWO POLICE STATION.

c) KERICHO/KIPCHIMCHIM 2059 – OCS KERICHO POLICE STATION.

d) KERICHO/SOSIOT 528 – OCS SOSIOT POLICE STATION.

e) KAPSOIT PLOT NO. 61 – OCS KAPSOIT POLICE STATION.

3. THAT the costs of this application and the surveyors and auctioneers and eviction expenses be borne by the defendant/respondent.

2. The application is supported by the grounds on the face of the application and her Supporting Affidavit sworn on 7th February 2020. The main ground for the application is that the Court of Appeal in; **Civil Appeal No. 274 of 2013 between Selina Chepterer Martim (Appellant) and Grace Chemutai Maritim (Respondent)** set aside the judgment of *Hon. Lady Justice R. V. P. Wendoh* on 18th October 2017. The court stated;

“We now turn to the distribution of the estate itself. The learned Judge found that Maritim’s estate comprised the following:

Miti Mingi Mbaruk Block x/xxx

Miti Mingi Mbaruk Block x/xxxx

Kapsoit Plot xx

Kericho/Sosiot xxx (still in Regucheche's name)

Balance at Kenya Commercial Bank Kericho

Selina's prayer before us, as it was before the High Court is that two other properties namely Nakuru/Municipality 29/10 (Ronda) and Nakuru Blockxxx Ronda were and ought to have been included in Maritim's estate. The learned Judge however found that these two plots were registered in Grace's name upon her purchase of them, rejecting the evidence of Selina and Elijah Kiplagat Chelagat (PW2) that they belonged to Maritim who balloted for them (formerly as Plot No. 5) as a member of Kalenjin Enterprises, Selina's complaint is that the learned Judge erred in rejecting PW2's evidence of how Maritim obtained the two plots while accepting, without any proof, Grace's assertions that she bought the plots using proceeds from her business.

Upon our careful consideration of the testimony given by various witnesses together with the affidavits filed including the uncontroverted one by Selina sworn on 24th February 2005 indicating that she lived with Maritim on Plot No. xx at Rhonda before it was subdivided into xx/xx and xx/xxx and that she personally supervised the construction of residential houses thereon, we come to the inescapable conclusion that they were and are part of the estate of Maritim notwithstanding their purported transfer to Grace after his death.

As Maritim was survived by two houses by Grace and Selina, all the properties comprising his estate ought to and shall be distributed equally between them to hold on trust for themselves and their respective children in equal shares in accordance with Section 40 of the Act. For the avoidance of doubt the distribution shall ensure that Grace and Selina will not require to vacate the houses they each currently occupy."

3. The respondent Grace filed a Replying Affidavit sworn on 28th February 2020 in which she contends that the assets that form the estate of John Kipsae Maritim have been sold since the judgment of *Justice Wendoh* hence there is nothing to distribute. She has annexed copies of searches and title deeds to demonstrate those averments.
4. Selina, is a further affidavit sworn on 11th March 2020 contests what is stated in Grace's affidavit, on the ground that the Court of Appeal judgment set aside the High Court judgment, and hence any transaction that was carried out under that judgment was revoked, that in any event the searches show that some transfers were done in 2010, before the High Court judgment, in 2017, post the Court of Appeal judgment, and therefore the respondent did whatever she did so as to defeat the decision of the Court of Appeal.
5. Parties took time to file submissions. The applicant's submissions were filed on 29th January 2021. None were filed by the respondent.
6. The only issue for determination is whether the orders sought are tenable.
7. It is submitted for the applicant that the only thing that this court can do is enforce the judgment of the Court of Appeal. The applicant cited authorities where courts have directed that police do supervise the implementation of court orders by maintaining law and order e.g. in **Njeru Migara vs Emina Nkirote Njagi [2010] eKLR**. The counsel for the applicant further submitted that under **Rule 47 and 73 of the P & A rules**, this court was empowered to deal with this application and also grant the orders sought in the interests of justice.
8. I have carefully considered the affidavit evidence of each party, I have also considered the submissions by counsel for the applicant.
9. It is noteworthy that the Respondent never filed any appeal against the judgment of the Court of Appeal. So, that is the binding judgment on both parties. The moment the Court of Appeal determined what assets constitute the estate of the deceased, and how it was to be distributed, that effectively set aside any transactions that may have taken place prior to that judgment. Any transactions prior to the confirmation of the grant, pending the appeal in the Court of Appeal and post the Court of Appeal judgment, all those transactions cannot stand in the face of the Court of Appeal judgment. No arguments or averments can change that position, as all that the respondent avers to in her affidavit were in effect set aside, returning the whole estate back to the deceased so as to ensure equitable distribution. To that extent the effect of the application is simply to effect the Court of Appeal judgment therefore.
10. It is for that reason that I allow the same as prayed.
11. No orders as to costs

DATED AT NAKURU THIS 16TH FEBRUARY, 2021.

Mumbua T. Matheka

Judge

DATED AND DELIVERED VIA ZOOM THIS 27TH DAY OF APRIL 2021.

Mumbua T. Matheka

Judge

In the presence of:

Court Assistant Edna

Mrs. Ndeda for applicant objector

N/A Frank Mwangi for the respondent