



REPUBLIC OF KENYA

IN THE HIGH OF KENYA

AT MERU

SUCCESSION CASUE NO.83 OF 2003

IN THE MATTER OF THE ESTATE OF MUGAMBI KOBIA ALIAS M'MUGAMBI KOBIA-DECEASED

FRANCIS MUTUA MUGAMBI.....PETITIONER/RESPONDENT

VERSUS

BEATRICE GAKII MUGAMBI.....PROTESTOR/APPLICANT

RULING

1. The court is called upon to determine chamber summons dated 3rd November 2020 pursuant to Rules 49 and 73 of the Probate and Administration Rules. In it, the applicant seeks lifting and/or setting aside of orders of stay of execution made on 17/12/2019 to enable continuation of the transmission process of the estate of the deceased in regard to **Plot No.28A KARIENE MARKET** ; the entire rent collected from premises constructed on **Plot No.28A KARIENE MARKET** since the delivery of the court's decision on 17/12/2019 be deposited in court pending the determination of this application; all the necessary documents to effect the transmission of half share of **Plot No.28A KARIENE MARKET** to the applicant, be signed by the Deputy Registrar of the court in place of the respondent.

2. The grounds upon which the application is premised are set out in the body of the application and supporting affidavit of Beatrice Gakii Mugambi, the applicant herein, sworn on 03/11/2020. It is contended in that affidavit that the respondent has continued to collect and retain rent from the premises constructed on **Plot No.28A KARIENE MARKET** (hereinafter referred to as the suit property) in blatant disregard to the court orders of 17/12/2019. It is additionally contended that the respondent should be ordered to account for and deposit the said rent so far collected in court as earlier ordered. The applicant's further contention is that the Deputy Registrar of the court should sign the relevant transmission documents on behalf of the respondent/administrator.

3. In opposition to the application, the respondent filed a replying affidavit sworn on 25/02/2021. According to him, outcome of the pending appeal should be awaited before any adverse orders are issued. He also denies collecting and pocketing any rent arrears in respect to the suit property.

4. The court on 25/06/2021 heard oral submissions from Miss Athieno for the applicant and the petitioner in person after the counsel totally refused to attend. Miss Athieno prayed that the application ought to be allowed because any delay favours the respondent in his pursuit to continue using the property to the exclusion of the protester.

5. The respondent, on the other hand, when given a chance to address the court, insisted that even if given time to deposit, he would not because he had not collected any rent to be deposited in court. He reiterated his averments in his replying affidavit that his appeal ought to be heard first before any other orders are issued.

6. The application is grounded upon Rules 49 and 73 of the Probate and Administration Rules, which reserves the inherent powers of the court to make such orders as may be expedient for the ends of justice to be met. Those rules are the enablers of the court in meeting its core duty of dispensing justice and can only be invoked and applied towards that goal

7. I find that there exists a clear determination by the court dated 17th December 2019 which granted an order of stay for a period of sixty days and set a single condition thereof. It was that the rents collected from the subject property be deposited into court pending the hearing and determination of the appeal. The applicant has exhibited two letters to the respondent's counsel demanding compliance with the court orders to no avail. It is quite clear that the respondent is blatantly disregarding those orders, on which the conditional stay was pegged. What baffles this court is how what benefit the court can fathom in perpetuating his failure to execute his duties as a trustee and in total disobedience of court orders.

8. It thus become clear and undeniable that, the reason the respondent is opposed to the application is to perpetuate his sole enjoyment of the benefits he is deriving from the suit property, to the detriment of the applicant. This is therefore an apt situation for the invocation of the inherent powers of the court to do justice and to stamp the court's authority that court orders be obeyed by all and sundry. The only thing standing between the applicant and the enjoyment of her rightful share of the suit property is the limited conditional stay. That order lapsed and is non-existent for purposes of being enjoyed by the petitioner. Now that there is no order for stay, it follows that nothing should forestall the transmission of the estate. It ought to proceed and be concluded so that the file is rested and litigation brought to an end.

9. That ought to be done by the administrator who is said and demonstrated to be unwilling. As he is unwilling, let the Deputy Registrar execute the documents on his behalf.

10. In order that this file is moved towards closure, I direct that it be mentioned on the 15.11.2021 for a report on the level of compliance.

11. For the foregoing reasons, I believe the application is meritorious and the same should accordingly be allowed.

DATED, SIGNED AND DELIVERED AT MERU, BY MS TEAMS, THIS 25TH DAY OF JUNE 2021

PATRICK J.O OTIENO

JUDGE

In presence of

MS Ntarangwi for the protestor

Mr. Carpleters for the petitioner

PATRICK J.O OTIENO

JUDGE