

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 465 OF 1998

IN THE MATTER OF THE ESTATE OF WILLIAM ANYANJE LIVELE (DECEASED)

RULING

1. The application for determination is the Motion, dated 22nd March 2019. It is brought at the instance of Rose Khagali Anyanje, the administratrix of the estate herein. I shall refer to her hereafter as such. She seeks review of orders that were made on 29th October 2015, so that her daughter, Pauline Musimbi is assigned the portion of the land which comprises her homestead, while her son Allan Khayesi Anyanje takes the land earlier allocated to Pauline Musimbi. I shall refer to Allan Khayesi Anyanje as the respondent. All these are out of Nyang'ori/Kapsotik/308. She complains that the son had become violent and was subjecting her to hardship.

2. Pauline Musimbi, in support of that application, supports the administratrix, saying that she was aware that the relationship between the respondent was hostile, and the administratrix was always complaining about it. She avers that her mother has often taken refuge in one of the other son's houses upon being chased away by the respondent. She says that she has no objection exchanging places with the respondent, so that the administratrix can have some peace of mind.

3. The respondent has filed a response. He avers that he enjoys a good mother and son relationship with the administratrix, until recently when the instant application was filed. He states that the administratrix became indifferent in July 2020, and stated behaving strangely, such as refusing to take food cooked for her by his family, avoiding direct communication with him, when his siblings were present. He accuses his siblings of taking advantage of her old age, and poisoning her mind against him and his family. He avers that he has done everything to ensure that she was comfortable. He has connected water to her house, and renovated the house. He also takes her to hospital for regular visits since she suffers from old age related diseases such as hypertension.

4. The position taken by the respondent is supported by Rowena Mary Shigali, a co-wife of the administratrix and step-mother of the respondent. She avers that she stays on the same land with the two, sharing the same gate. She states that the relationship between the two has been very good, and the respondent has been with the administratrix since 1999. She says that he has always been kind to the administratrix, to the extent of renovating her house, and connected it to water and electricity. She also mentions that he has taken responsibility of rushing her to hospital whenever need arises. She also avers that the respondent has never been violent to the administratrix.

5. Pauline Musimbi has reacted to these replying affidavits, by saying that the problem was that the respondent was preventing the other children from visiting the administratrix, especially those with cars. She avers that the administratrix always complains that the respondent and his family mistreat her. She further that whenever she confronts the respondent about it he turns hostile. She further says that the respondent has not built a house on the compound, instead he occupies some of the houses built there by the deceased. There are other affidavits by other children of the deceased along similar lines, sworn by Nicholas Anyanje, Linda Anyanje and Emily Anyanje. There is also a response to the respondent's affidavit by Rose Anyanje. Rowlands Anyanje Salano, another sibling of the respondent, has sworn his own affidavit to support the position of the respondent. He accuses Pauline Musimbi of being the brains behind the whole dispute, as she wanted to take over the houses of the administratrix so as to use them for her NGO activities. There are several other responses by different sides of the same family.

6. Directions were taken on 29th September 2020, for disposal of the application on the basis of written submissions. Both sides have filed their respective written submissions, which I have read through and noted the arguments made.

7. The application before me is for review of orders that this court made in a judgment that was delivered on 29th October 2015. The application is premised on section 47 of the Law of Succession Act, Cap 160, Laws of Kenya. That provision merely reiterates the powers of the High Court to make such orders and decrees as it is allowed to by the Act, Review of orders of a probate court is allowed under Rule 63 of the Probate and Administration Rules, which imports the provisions of the Civil Procedure Rules to probate practice.

8. Under the Civil Procedure Rules, review is founded on discovery of new evidence of great importance that was no available as at the date the order was made, or on account of an error on the face of the record, or on the basis of any other sufficient reason. I have closely read through the written submissions by the applicant. They do not breathe a word amount meeting the conditions for review of probate orders. It is not alleged that there was any new matter of evidence stumbled upon by the administratrix that was so important as to require a revisit of the orders made by the court on the distribution of the estate. Neither is it alleged that the court had made an error which was glaring from the face of the reason. Nor is any attempt made to bring the scenario presented within the omnibus ground relating to any other sufficient cause. The administratrix has made no effort in her written submissions to justify why the court ought to exercise discretion to disturb its earlier orders.

9. The court distributed the estate herein in 2015. By now the administratrix ought to have caused transmission of the estate. It is surprising that more than five years after confirmation, the estate has not been transmitted. Secondly, the issues raised have nothing to do with succession. They are domestic squabbles in respect of which the parties ought to seek remedy elsewhere rather than from the probate court. The fight appears to be over control of the houses that stand on the land. If the respondent is being violent to the administratrix as alleged, then recourse should be had to the law in the usual manner, by filing reports with the police, whose duty it is to maintain law and order in society, or through the church, or clan or extended family. The court distributed the estate more than five years ago, and I see no reason why

I should revisit the orders made earlier. The application lacks merit and it is hereby dismissed. Each party shall bear their own costs. The property herein is situated in Vihiga, so the file shall be transfer red to the High of Kenya at Vihiga.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 6TH DAY OF AUGUST, .2021

W. MUSYOKA

JUDGE