



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. E1096 OF 2021

IN THE MATTER OF THE ESTATE OF KAMAU FRANCIS (DECEASED)

MARGARET NJOROGE KARIUKI.....PETITIONER/APPLICANT

VERSUS

ZUHURA WANJIKU ALIAS MONIKA WANJIKU.....DEFENDANT/RESPONDENT

RULING

1. Before this Court for determination is the summons dated **11th June 2021** by which **MARGARET NJOROGE KARUKI** (the Applicant) seeks for orders -

“1. THAT pending the hearing and determination of the petition the estate of the deceased FRANCIS KAMAU be preserved by preservatory [sic], orders from intermeddling by the Respondent and or any other third parties whomsoever until distribution is done and petition finalized

2. THAT the costs of this application be costs in the cause.”

2. The Respondent **ZUHURA WANJIKU** opposed the application through her Replying Affidavit dated **6th July 2021**. The application was canvassed by way of written submissions. The Applicant filed the written submissions dated **4th August 2021** Whilst the Respondent relied upon the written submissions dated **28th July 2021**.

BACKGROUND

3. This Succession Cause relates to the estate of **FRANCIS KAMAU** (hereinafter ‘the **Deceased**’) who died Intestate in Nairobi on **21st April 2018**. Following the demise of the Deceased the Applicant filed this Succession Cause in the High Court seeking to be appointed an Administrator of the estate as the Deceased. On her part, the Respondent through her advocate filed an objection dated **6th July 2021** to the petition by the Applicant. The Applicant then filed this present application seeking orders for the preservation of the estate of the Deceased.

Analysis and Determination

4. I have carefully considered the present application, the Replying Affidavit filed by the Respondent as well as the written submissions filed by both parties. The only issue for determination is whether the prayer for preservation of the estate should be granted.

5. The Applicant claims to be the widow to the Deceased. She avers that the Deceased married her in the year **2007** under **Kikuyu Customary Law** and that she cohabited with the Deceased at **Kawangware 46**, which she describes as the matrimonial home. The Applicant has annexed a chief’s letter dated **2nd June 2021** indicating that the Deceased was survived by herself as widow and by a son **Denis Macharia Kamau** said to be mentally challenged.

6. The Applicant alleges that she was evicted from the matrimonial home by the Respondent who then leased said property to a third party. That her attempts to obtain help from authorities have been futile. The Applicant is apprehensive that having obtained an allotment letter in her own name the Respondent may proceed to sell or otherwise alienate the Deceased assets. Hence the present application for preservatory orders.

7. On her behalf the Respondent categorically denies the Applicants claim that she is the widow of the Deceased. The Respondent asserts that the Deceased was survived only by herself (his daughter) and her brother **Denis Macharia**. The Respondent has annexed a chief's letter (Annexure 'ZWK-1') indicating as much.

8. The Respondent asserts that the Applicant has no *locus standi* in this Succession Cause as she was never married to the Deceased and was not related to him in any way. She states that the Applicant has never lived with the Deceased and has no right to administer his estate hence the objection filed by the Respondent.

9. The court therefore is faced with two conflicting claims to the estate of the Deceased – one by the Applicant claiming to be the widow and another by the Respondent as daughter to the Deceased. At this point, the court is not required to determine which claim is valid. All the court is being asked to determine is whether the prayer seeking preservation of the estate are merited.

10. **Section 47 of the Law of Succession Act** vests court with wide discretion in granting protective powers for purposes of safeguarding the estate of a deceased person. It provides:

The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.

11. Likewise, **Rule 73 of the Probate and Administration Rules** provides that: -

“73. Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

12. In the case of **JAPHET KAIMENYI M'NDATHO VS M'NDATHO M'MBWIRIA [2012] eKLR** the court noted that an Applicant seeking preservatory orders over the estate of a Deceased person had to satisfy the following conditions

a. ***“That the suit property is at risk of being disposed of or alienated or transferred to the detriment of the applicant unless Preservatory orders of inhibition are issued.***

b. ***That the refusal to grant order of inhibition are issued.***

c. ***That the applicant has arguable case.”***

13. The Applicant has accused the Respondent of intermeddling in the estate using the Chief's letter issued to her to secure an Allotment letter in respect of one of the Deceased properties.

14. It is in my view imperative that the estate of the Deceased be protected against any further intermeddling pending appointment of an Administrator to the Estate.

15. The Applicant has placed material before this court suggesting that she was a wife to the Deceased. The Respondent is a daughter to the Deceased. There is a risk that the estate may be dissipated and/or wasted to the prejudice of the Applicant. In my view, the Applicant has established a *prima facie* case. There is a need to preserve the estate of the Deceased pending determination of the objection filed by the Respondent.

16. Accordingly, I find merit in this application and hereby order that

(1) The Respondent be and is hereby restrained either by herself, her servants, agents or any other person acting under her authority from intermeddling with the estate of the Deceased by selling, leasing, developing and/or charging the properties known as

(i) Dagoretti/Riruta/2850

(ii) Dagoretti/Riruta/3446

(ii) Nairobi Block 118/1101 or any other property forming part of the estate of the Deceased pending finalization of the petition filed by the Applicant.

(2) Each party shall bear its own costs.

Dated in **Nairobi** this 22nd day of **October, 2021**.

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MAUREEN A. ODERO

JUDGE