



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 515 OF 2015

IN THE MATTER OF THE ESTATE OF PAMELA AOKO ODHIAMBO (DECEASED)

JOHN JUNIOR ODHIAMBO.....APPLICANT/PROTESTOR

VERSUS

ELZEEVER ODHIAMBO.....1ST RESPONDENT/ADMINISTRATOR

CHERYLLE SOOMES ODHIAMBO.....2ND RESPONDENT/ADMINISTRATOR

RULING

(i) Before this Court for determination is the summons dated **12th May 2021** by which the Applicant **JOHN JUNIOR ODHIAMBO** seeks orders as follows:-

1. Spent.

2. THAT an interim injunction do issue compelling the Respondents herein ELZEEVER ODHIAMBO and CHERYLLE SOOMES ODHIAMBO to facilitate the restoration and reconnection of power supply in premises on L.R. No. NAIROBI/BLOCK 82/3700 pending hearing and deamination of the Application for Revocation of Grant dated 19th February 2021.

3. THAT an order do issue compelling Kenya Power & Lighting Company to unconditionally restore supply of electricity power, return to site and reconnect prepaid meters number 01450607476, 01450431125, 14103950698, 14103950680, 14103950649, 14103950730, 14103950631, 14103950748 and 0145065051 to premises on L.R. No. NAIROBI BLOCK/82/3700 DONHOLM within fourteen (14) days from the date of the order at the cost of the Respondents.

4. THAT the Respondents be condemned to pay the costs for this application”.

2. The Application was premised upon **Rules 49, 63 and 73** of the **Probate and Administration Rules** and **Order 40 (a), (b)** and 2 of the **Civil Procedure Rules 2010**, and supported by the Affidavit of even date sworn by the Applicant.

3. The **1st Respondent ELZEEVER ODHIAMBO** and the **2nd Respondent CHERYLLE SOOMES ODHIAMBO** both opposed the application and relied upon the Replying Affidavit dated **8th June 2021** sworn by the **1st Respondent**. The application was canvassed by way of written submissions. The Applicant filed the written submissions dated **14th June 2021** whilst the Respondents relied upon their written submissions dated **19th July 2021**.

BACKGROUND

4. This matter arises from the Succession Cause filed in respect of the estate of **PAMELA AOKO ODHIAMBO** (hereinafter ‘the Deceased’) who died in Nairobi on **20th April 1999**. At the time when the Deceased passed on the Applicant was still a minor. Following the demise of the Deceased the **1st and 2nd Respondent** sought and obtained letters of Administration Intestate in respect of her estate which letters were issued to the Respondents on **22nd September 2015**. The Grant was thereafter confirmed on **14th June 2016**.

5. The Applicant claims that the Respondent obtained the Grant fraudulently. He filed a summons dated **19th February 2021** seeking Revocation/Annulment of said Grant. The summons for revocation is yet to be heard.

6. One of the assets left behind by the Deceased was **L.R. No. Nairobi/Block 82/3700** (hereinafter the 'suit property'). The Applicant alleges that the Respondents clandestinely transferred the said property to themselves effectively disinheriting the Applicant.

7. At some point the Applicant re-located from **Nakuru** where he was residing and moved to occupy one of the housing units in the suit property. The Applicant claims that after he filed a legal challenge to the Grant the Respondents issued a notice to all the tenants of the suit property requiring them to vacate the units.

8. The Applicants claims that the 2nd Respondent using her position as an employee at **Kenya Power & lighting Company (K P & L Co.)** caused all the pre-paid meters in the housing units in the property to be carried away on **7th April 2021**. That his attempt to engage **K P & L C** to have the power restored to the suit property have borne no fruit. That as a result the Applicant and the few tenants who remained in the property have been forced to live without power connection to their detriment, despite the fact that they are ready and willing to pay for power connection.

9. The Applicant submits that the actions of the Respondents are malicious and are calculated to intimidate him into withdrawing the summons for revocation of Grant. He further submits that the Respondents have failed in their legal duty as Administrators by allowing the estate of the Deceased to go to waste – by chasing away tenants who would have provided much needed rental income to the estate. The Applicant prays that the Court direct **K P & L Co.** to restore power to the suit property.

10. The Respondents as stated earlier have opposed the application. They allege that the suit property was not built and completed by the Deceased prior to her demise as alleged by the Applicant. The Respondents aver that the Deceased left the suit property as an incomplete four bedroomed maisonette. That it was they who completed the building, partitioned it into **seven (7)** single rooms and applied for electricity meters to be connected. That all this was done without any input from the Applicant.

11. The Respondents deny that they evicted the tenants from the property. They allege instead that it was the Applicant who forcefully moved into the suit property evicted some tenants and began to demand rent from the remaining tenants. The Respondents claim that the Applicant has denied them access to the suit property. They urge the court to dismiss this application in its entirety.

Analysis and Determination

12. I have carefully considered the application before this court, the Affidavit in reply as well as the written submissions filed by both parties. This is essentially a succession dispute pitting the Applicant against the two Respondents. It is not in dispute that the Respondents are currently the Administrators of the estate and that they hold a confirmed Grant issued to them by the court on **14th June 2016**.

13. The Applicant in this motion is basically seeking a mandatory order compelling **K P & L Co** to restore power connection to the suit property. The Applicant is **not** the legal owner of said property. Moreover, **K P & L Co** are not parties to this suit. The court cannot issue mandatory orders against a third party who has not been named in the suit and was not heard. Moreover, the Applicant is not the legal owner of the suit property. He has no legal capacity to enter into a contract with **K P & L Co.** for supply of power to the said property.

14. Secondly, at the present time the Respondent are the legal administrators of the estate of the Deceased. The certificate of confirmed Grant issued to them has not been set aside or revoked. It remains valid. Therefore, the Respondents currently have the legal authority to deal with the property/assets of the Deceased in any manner they see fit for the benefit of the estate and the beneficiaries.

15. The Applicant has not availed to this court any contract/Agreement with the Respondents as legal Administrators of the estate allowing him to occupy a unit in the suit property. The mere fact that the Applicant has challenged the rights of the Respondent to administer the estate by filing a summon for revocation of Grant does not entitle him to occupy and/or take possession of said property.

16. All in all, I find no merit in the present application. The same is dismissed in its entirety.

17. Having said that, this court is of the view that in order to prevent further acrimony and to maintain peace between the parties the current *status quo* ought to be maintained pending the hearing and determination of the summons for revocation of Grant filed by the Applicant. Accordingly I make the following orders: -

(1) The summons dated **12th May 2021** is hereby dismissed in its entirety.

(2) The current *status quo* to be maintained pending the hearing and determination of the summons for revocation of Grant dated **17th February 2021**.

(3) For avoidance of doubt, the Respondents are restrained from interfering with the Applicants occupation of a housing unit in **L.R. No Nairobi/Block 82/3700** in any manner whatsoever pending hearing and determination of the summons for revocation of Grant dated **19th February 2021**.

(4) Each party to pay its own costs for the application.

Dated in **Nairobi** this **15th** day of **October, 2021**.

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MAUREEN A. ODERO

JUDGE