



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
FAMILY DIVISION

HCCC CAUSE NO. 11 OF 2018

IN THE MATTER OF THE ESTATE OF MR. WILLIAM ODUNDO KIRIRI – (DECEASED)

TERESA AUMA ODUNDO.....1ST APPLICANT

ALOYCE OGADA ODUNDO.....2ND APPLICANT

VERSUS

HELIDA OLANG'O ODUNDO.....1ST DEFENDANT

EZEKIEL ODUNDO.....2ND DEFENDANT

RULING

1. The Application coming for consideration is dated 19.12.2018 filed under Certificate of Urgency seeking the following orders

(i) THAT this Application be certified urgent and the same be heard ex-parte.

(ii) THAT the Defendants be restrained from letting, collecting rent and selling the deceased's property until the family obtain a letter of administration and the property is divided equally among the two families of the deceased.

(iii) THAT the Defendant and her children be and are hereby restrained from interfering with the property wherever it is, in any other manner, pending hearing and determination of this case.

(iv) THAT the rent collected from houses in Kibera Slum be deposited with the office of the Public Trustee, the same should include the rent collections since the death of Mzee William Kiriri Odundo.

(v) THAT the costs be awarded to the Applicants.

2. The Application is supported by the Affidavit Aloyce Ogada Odundo in which he has deposed that the Respondents Helida Olango Odundo and Ezekiel Odundo are using the Property unlawfully without involving all the beneficiaries.

3. The 1st Respondent filed a Replying Affidavit dated 30.5.2019 in which she deposed that the Applicant who is her stepson has been harassing and threatening her and that the deceased left a Will which was read to all the parties.

4. Further, that the deceased had two wives and every wife has always lived in her place and allocated equal units of 30 rental houses.

5. The Applicant filed a further Affidavit in response to Replying Affidavit in which he disputed the averments in the Replying Affidavit that the Estate of the deceased has been distributed.

6. The parties filed written submissions in the Application dated 19.12.2018 which I have duly considered. The Applicant is a son of the deceased Mzee WILLIAM KIRIRI who died on 9.3.2018 while the Respondent is the second wife of the deceased.

7. I find that nobody has petitioned for letters of administration in respect of the Estate of the deceased.

8. The issues raised by the parties can only be handled in the Succession Cause.

9. I accordingly find that the Parties should file a Petition forthwith for purposes of distribution of the estate.

10. The Application dated 19.12.2018 is premature as the said issues of distribution of the estate ought to be raised in the Succession Cause.

11. I agree with the holding of Mabeya J in the decision in the estate of ZakariaNthigaMatumo (Deceased) that the probate court's sphere of inquiry is limited to ascertaining what assets are available to the estate (emphasis mine), who the beneficiaries are and the mode of distribution of the estate.

12. I direct that the parties appear before this Court for purposes of appointment of administrators of the Estate of the deceased WILLIAM ODUNDO KIRIRI within 14 days of this date.

13. If the parties are unable to agree on who to administer the estate the court will appoint administrators with the option of sending the case to the Public Trustee for administration of the Estate.

14. The application dated 19.12.2018 is accordingly dismissed with no orders as to costs.

DELIVERED, DATED AND SIGNED IN OPEN COURT THIS 24TH DAY OF JANUARY, 2020

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI.