

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAMIRA

SUCCESSION NO: 2 OF 2019

IN THE MATTER OF THE ESTATE OF SABUNI MARITA GILBERT (DECEASED)

BETWEEN

ESTONE NYANGORI GODFREY SABUNI.....PETITIONER

- VRS -

HELLEN NYABOKE SABUNI.....OBJECTOR

RULING

Before me is the General Summons dated 26th September, 2019 by which Hellen Nyaboke Sabuni, the applicant prays as follows: -

1. “(Spent)

2. THAT this honourable Court be pleased to issue orders against the DCIO BORABU directing him to investigate the claims of fraud concerning the signature of the beneficiaries herein contained in Form 38 and file a report within 30 days.

3. THAT costs of this application be provided for.”

The application is premised on five grounds which can be summarised into one ground vize that the applicant who is the widow of the deceased and the other beneficiaries of the deceased’s estate did not give consent to the petitioner to file this succession cause and so did not append their signatures in form 38 as purported by the petitioner. The applicant contends that granting this application is the only guarantee that this cause shall move forward.

The application is supported by an affidavit sworn by the applicant on 26th September, 2019 in which she reiterates the grounds on the face of the application.

The application was canvassed through written submissions. I have considered the application, the grounds thereof, the supporting and replying affidavits and the rival submissions of counsel for the parties. I am in agreement with counsel for the petitioner/respondent that it is not within the ambit of this court to order or direct police officers to carry out investigations. The applicant rather than filing this application should have been advised to lodge a complaint at the relevant police station and to follow the laid down mechanisms and chain of command should she be aggrieved by the manner her complaint is handled. The application is clearly misconceived as the only guarantee to move the cause is to follow the procedure provided in the **Law of Succession Act** and the **Probate and Administration Rules**. In the premises the application is dismissed but having perused the affidavit I find it necessary to, in exercise of the inherent powers vested upon this court under **Rule 73 of the Probate & Administration Rules** make the following orders: -

1. THAT the parties to this cause be and are hereby restrained whether by themselves or through their agents or proxies or anybody acting on their behalf, from in any manner intermeddling with the estate of the deceased whether by way of sale, gifting or in any other manner disposing the immoveable property of the deceased pending the issue and confirmation of the grant of letters of administration into the estate.

2. THAT the parties/beneficiaries are hereby informed that it is an offence to intermeddle with the estate of the deceased person and further that it is unlawful under Section 55 (1) of the Law of Succession Act to make any division or to dispose any portion of the immoveable property unless and until the grant has been confirmed and that any entity or person purchasing such land also commits an offence and acts at their own risk.

3. THAT this cause shall without delay and at the earliest opportunity be placed before the Deputy Registrar of this court to take the necessary steps to have it gazetted so as to give opportunity to those with objections to raise them as provided in the Act and Rules.

4. THAT given the nature of these proceedings each party shall bear their own costs.

Signed, dated and delivered in Nyamira this 27th day of February, 2020.

E. N. MAINA

JUDGE