



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION APPEAL NO. 4 OF 2019

GLADYS SHANYISA.....APPELLANT/APPLICANT

VERSUS

GLADYS MARAKA.....RESPONDENT

AND

JOSEPHINE KHALWALE.....1ST INTERESTED PARTY

ACHAYO JOSEPHINE OKECHI.....2ND INTERESTED PARTY

BROWN SHIKALI.....3RD INTERESTED PARTY

SHEILA MARAGA.....4TH INTERESTED PARTY

RULING

1. The applicant herein has filed a notice of motion dated 10th September, 2019 seeking for orders that:-

(i) Spent

(ii) The interested parties/respondents be punished by the Honourable Court for intermeddling with estate of a deceased person.

(iii) An order of injunction be issued restraining the respondents either in person or through their agents, workers, tenants or any other person acting under their instruction from trespassing on, constructing, working on or in any other manner interfering with land parcel No. Kakamega/Tiriki/805 the property of the deceased herein.

(iv) Costs be provided for.

2. The application was premised on grounds on the face of the application and supported by the affidavit of the applicant. The application is based on the grounds that the succession cause that the applicant had filed at the lower court being Kakamega CM Succession Cause No. 195 of 2017 was dismissed thereby leaving the estate unadministered. That the interested parties herein are intermeddling with the estate by constructing permanent structures and tilling land without lawful authority. She thereby seeks for orders stated.

3. The application was opposed by the interested parties vide their preliminary objection dated 1st November, 2019 on the grounds that the court sitting as an appellate court lacks jurisdiction to entertain the subject matter within the appeal suit. That the court lacks the locus to prosecute matters raised in the application and that the application is an abuse of the appellate process of the court.

4. I have considered the application and the objection thereto. The applicant moved to this court in this matter by way of an appeal filed on 28th February, 2019. The appeal is against one Gladys Maraga. Then on the 10th September, 2019 she filed the instant notice of motion against some other people who are not parties to the appeal. She is seeking for orders of injunction against the said people and for them to be punished for intermeddling with the estate of the deceased.

5. There is no doubt that the notice of motion is misguided and an abuse of the process of the court. This court has no jurisdiction to adjudicate on fresh matters during an appeal on matters that are not the subject of the appeal. There is totally no merit in the application dated 10th September, 2019. The same is dismissed with costs to the respondents.

Delivered, dated and signed at Kakamega this 29th day of May, 2020.

J. N. NJAGI

JUDGE

In the presence of:

No appearance for the Appellant

No appearance for the Respondent

No appearance for the interested parties

Court Assistant - Polycap