



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

SUCCESSION CAUSE NO. 30 OF 2015

IN THE MATTER OF THE ESTATE OF THE LATE ELIZABETH MARA W/O KARONGO (DECEASED)

MARY OBISWA KORONGO.....APPLICANT

VERSES

JANE MIGARUSHA KARONGO.....1ST RESPONDENT

B.O.G. SANGO SECONDARY AND

PRIMARY SCHOOL.....2ND RESPONDENT

RULING

1. The deceased herein died on the 13th January 1975. The 1st respondent who is her daughter in law petitioned for the letters of administration to her estate which was granted on the 18th August 2015 and confirmed on the 17th October 2018.
2. The applicant herein has filed her chamber summons dated 14th day of April 2020 praying that the said grant be revoked for the simple reason that the 1st respondent did not disclose to the court that she was also a beneficiary to the estate by virtue of being a daughter in law as well to the deceased.
3. She further prayed that the 2nd respondent be restrained by means of a temporary injunction from evicting her from land parcel number **BUNGOMA /NAITIRI/183**.
4. Her supporting affidavit sworn on the same day states that she was the wife to the deceased late son, one, **HOLMES KARONGO** and that she has been residing on the said land ever since. She said that the 1st respondent has allowed the 2nd Respondent to take over the land as though it had bought from her and that her house had been demolished and fenced off by the 2nd Respondent.
5. She further attached some photographs showing the extent of the damage to her house and that the 2nd Respondent had ploughed out the entire portion she has been in occupation.
6. The 1st Respondent did not deny in her replying affidavit sworn on the 6th day of May 2020 that the Applicant was indeed a daughter in law to the deceased just like her. She said that the Applicant has been enjoying the use of the land where she has been planting maize till the 2nd Respondent encroached on it. She went ahead and attached a copy of a ruling of a case filed at Bungoma chief magistrate court where the parties were advised to seek recourse in the High Court.
7. She further deposed that the action by the 2nd Respondent was meant to deprive the beneficiaries of the deceased estate the use of the land. She stated that the 2nd Respondent had already filed a caution over the said parcel of land at the land registry at Bungoma.
8. The 2nd Respondent vide the replying affidavit of **GLADYS WAMELA** the secretary of the board of management sworn on the 28th day of May 2020 has given a chronology of the ownership of the suit parcel of land. She said that the deceased freely gave the land to the school sometimes in the year 1969. The nursery, primary and secondary schools were established therein and it has been in occupation to date.
9. The school has gone ahead and paid all the relevant dues to the Settlement Fund Trustees and they have been in occupation of the land to date. She argued that they have been in possession of the same for the last 12 years and they claim the right by virtue of adverse possession. She went on to state that the National Land Commission has in fact recognised the school's ownership of the land.

10. The court then ordered that this matter be disposed by way of written submissions which the parties have complied. The court need not produce the same here but what has been captured across the board as issues for determination are whether the Applicant has a claim in the deceased estate and whether in view of the affidavit evidence available orders of injunction should be issued against the 2nd Respondent.

11. The 1st Respondent clearly recognised the Applicant as a Co-daughter in-law and therefore this grants her equal chance to the estate of their deceased mother in law. In this regard this court hereby amends the confirmed grant herein dated **17th October 2018** to include the Applicant and the parcel of land namely BUNGOMA /NAITIRI/183 to be registered in their joint names.

12. The other pertinent issue is the position of the 2nd Respondent in the estate. There are several annexures indicating that the deceased surrendered the land to the school way back in 1969 and it appears that the nursery, primary and secondary schools have been on the site since then though gradually built under the auspices of the Salvation Army Church.

13. From the evidence also on the attached affidavits, it appears that the Applicant as well has been in occupation of the portion of land measuring about 3.5 acres till the school decided to fence off and destroyed her house. That allegation of destruction of the applicant's house seemed not to have been disputed as such by the applicant as the photos produced were not challenged.

14. In view of the competing evidence produced by both sides this is a clear case where oral evidence must be adduced. One of the issues which I find to be germane is whether the deceased authored the letter that surrendered her land to the school and if that was the case was she given the alternative land she seemed to suggest. At the same time is the claim of adverse possession by the respondent valid?

15. These and others are questions which are beyond the jurisdiction of this court. The same must be ventilated at the ELC court. This court will only confine itself to the jurisdiction it has mandate over.

16. For now, this court finds that the applicant is a beneficiary to the estate of the deceased herein and has equal rights just like the 1st respondent. Secondly, the land in question was originally allotted to the deceased by the Settlement Fund Trustees and the issue of surrender to the 2nd respondent must be determined in a proper court namely Environment and land court.

17. This court also finds that the applicant was still in occupation of a portion of the land. She claims to be about 3.5 acres. The 2nd respondent has not denied this fact. It is therefore evident that in the absence of any valid legal process or court order exhibited, her eviction and burning of her house as well as fencing off of that portion she claimed to have been in occupation was illegal. Even if the 2nd Respondent had a claim over the portion occupied by the Applicant it ought to have used a lawful means to remove her which prima facie seemed not to have been the case here.

18. This court has no doubt that the schools occupy some substantial part of the land. The interest of both parties must be safeguarded pending the determination of the ownership of the land. The school which is a public institution must be allowed to operate peacefully without any interruptions. The applicant no doubt must equally be permitted to utilise a portion of the land she has been in occupation.

19. In the premises, putting all the factors constant and in the interest of justice this court makes the following orders;

(a) The applicant herein MARY OBISWA KORONGO is hereby enjoined as a joint Administrator of the estate of the deceased herein and the grant issued on the 17th October 2018 is hereby amended to that effect.

(b) The land parcel number BUNGOMA/NAITIRI/183 shall be registered in the joint names of the two administrators.

(c) The parties are hereby advised to pursue legal redress in terms of the actual ownership of the suit land at the Environment and Land court.

(d) this cause is hereby transferred to Bungoma high court and any other subsequent proceedings regarding this estate shall be filed at the said High court which is within the geographical jurisdiction of the suit land

(e) Pending the outcome of order(c) above the Applicant is hereby allowed to continue in occupation and to utilise a portion she has been utilising measuring about 3.5 acres in land parcel number Bungoma /Naitiri/183 and the County Police Commander Bungoma to ensure compliance of this order.

(f) Each party shall bear its own cost.

Dated, signed and delivered at Kitale in chambers on this 28th day of May 2020.

In the presence of Barmao holding brief for Liko Advocate for the Applicant

No appearance for the Respondent.

H. K. CHEMITEI

JUDGE

28/5/2020