



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

SUCCESSION CAUSE NO. 37 OF 2019

IN THE MATTER OF THE ESTATE OF THE LATE ISACK KIMAIYO KETER ALIAS KIMAIYO KETER (DECEASED)

SARAH JEPKEMBOI MAIYO.....1ST APPLICANT

JOYCE KITAI.....2ND APPLICANT

ELIZABETH CHEPKOECH BIRGEN.....3RD APPLICANT

MIRIAM MAIYO.....4TH APPLICANT

VERSES

ELISHA KIPNGETICH MAIYO.....1ST RESPONDENT

JACOB KIPKURGATMAIYO.....2ND RESPONDENT

RULING

1. The deceased herein died on the 6th day of August, 2019 and his wife MILKA JELEL KETER was granted letters of administration on the 11th March, 2020. Unfortunately, she also passed on 28th March 2020. The estate was consequently left without an administrator.
2. The applicants herein filed an amended summons dated 21st April, 2020 seeking that they be appointed administrators of the estate in place of their late mother. They also prayed that the respondents who are their brothers be enjoined from leasing, ploughing or dealing in any way with the deceased parcel of land.
3. The supporting affidavit of the 1st Applicant dated 21st April 2020 state that the Respondents immediately after the death of their mother invaded the matrimonial home and chased them violently and proceeded to plough the land measuring 7 acres which was being utilised by their mother before she died.
4. She further attached copies of P3 forms indicating the violence meted against them by the respondents and their agents. The matter was apparently reported at the police station an occurrence book opened.
5. In response the 1st Respondent through his replying affidavit sworn on the 5th day of May, 2020 has opposed the application on the grounds that it is the respondents who have intermeddled with the estate after the death of their mother. He said that the applicants who are their sisters and are married elsewhere have interfered with the smooth running of the estate. They denied they were violent but on the contrary it is them who became violent.
6. The extent of the violence is exemplified by the annexed copy of the P3 form and other treatment notes indicating the violence meted against the 2nd Respondent.
7. They further enumerated the properties of the deceased which they were in occupation and used prior to his demise and that of their late mother. They argued that they were not in agreement that the applicants be allowed to administer the estate as they were long gone and were in their respective matrimonial homes.
8. Having gone through the application which came by way of certificate of urgency, the court on the interim basis granted the 1st Applicant and the respondents to administer the estate pending the determination of this application.

9. The parties were then ordered to file written submissions which the Applicants alone did comply. They supported their application and prayed that they should be granted the orders sought as they have fulfilled the required threshold to be granted orders of injunction.

10. The court has perused the said submissions by the Applicant's Counsel and it is in agreement that since the applications and the Respondents are all beneficiaries they each have equal rights over the estate of their father. For now, however there is need to preserve the estate pending further orders as the parties though related have serious disagreements over the management of their father's estate.

11. The court need not delve into the arrangements made by the deceased prior to his death if any since that would be done at the level of the distribution. Further the issues of violence meted against each other is criminal in nature and the police are equal to the task. They may pursue that line independently.

12. It appears that the bigger issue for now is the 7 acres parcel of land that was being utilised by their deceased mother. It is contented that the Respondent invaded the same and have since ploughed and or leased out.

13. The court for now finds it prudent to have the status of the said parcel preserved till the determination of this cause. This would enable that court make a proper finding after orally hearing the parties. There is need however to have the land utilised positively in the meantime.

14. In the premises, and since both the respondents and the Applicants have equal legal rights over the estate as earlier mentioned and pending the final determination of this cause, the said portion measuring 7 acres which was being utilised by their deceased mother shall be shared equally between the Respondents and the Applicants. In other words, the Applicants shall be free to utilise three and half acres thereof and the respondents three and half acres. The parties are at liberty to appoint a surveyor of their choice to carry out the subdivision of the same. They are also at liberty to nominate whoever they desire among their cohort to utilise their portions.

15. Secondly, the interim orders which granted the 1st and the Respondents to be joined administrators of the estate are hereby confirmed. They may be at liberty to add any other 4th Administrator they may desire to enjoined preferably an independent one.

16. Being a family issue, each party shall bear their respective costs.

Dated, signed and delivered at Eldoret via zoom this 28th day of May 2020

H. K. CHEMITEI

JUDGE

28/5/2020