



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
PROBATE & ADMINISTRATION NO. 173 OF 2009

IN THE MATTER OF THE ESTATE OF:

MARTIN OCHOMO OCHEKDECEASED

BETWEEN

COLLATE ANYANGOT OCHOMPETITIONER/ RESPONDENT

AND

TABITHA AMUKAGA OURE.....OBJECTOR/APPLICANT

RULING

1. The objector/applicant herein moved the court by way of Notice of Motion dated 24th February 2020 under sections 76(d) (ii) of the Law of succession Act and Rule 73 of Probate and Administration Rules. She is seeking the following orders:

- a) That this application be certified as urgent and service be dispensed with in the first instance. [Spent]
- b) That this honourable court be pleased to issue a temporary injunction restraining the petitioner/respondent, her agents, servants, employees and/or any person claiming through her from trespassing, cultivating, cutting trees, tilling, erecting on the suit land parcel No. S.Teso/Asinge/1168 pending the hearing of this application inter-partes.
- c) That this honourable court be pleased to issue a temporary injunction restraining the petitioner/respondent, her agents, servants, employees and/or any person claiming through her from trespassing, cultivating, cutting trees, tilling, erecting on the suit land parcel No. S.Teso/Asinge/1168 pending the hearing and determination of the objection proceedings.

2. The application is premised on the following grounds:

- a) That the respondent who is not in possession of the said suit land parcel No. S. Teso/Asinge/1168 has continued to hire out the same for cultivation and cutting of trees for timber to third parties who are tampering with the existing boundary.
- b) That the illegal and unlawful actions of the respondent is intended to circumvent the objection proceeding that is before this honourable court by tampering with existing evidence on the ground.
- c) If it is fair and just and for the interest of justice for orders sought herein to be granted.
- d) The respondent does not stand to lose if the orders sought is granted.

3. The application was opposed on grounds that:

- a) The applicant/objector is not related to the deceased herein; and
- b) The application is an abuse of the due process of the court.

4. The current application cannot be adequately addressed. The applicant ought to have prosecuted the pending objection where the issues raised herein can be canvassed by way of evidence.

5. The application lacks merit and is accordingly dismissed.

DELIVERED and SIGNED at BUSIA this 30th day of July, 2020

KIARIE WAWERU KIARIE

JUDGE