



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

SUCCESSION CAUSE NO.144 OF 2009.

IN THE MATTER OF THE ESTATE OF THE LATE EZEKIEL WANJARA OKUL - (DECEASED)

NAOMI KEMUNDO OKUL.....PETITIONER/RESPONDENT

VERSES

MARK OPIYO OKUL.....OBJECTOR/RESPONDENT

RULING

1. The application dated **8th July 2020** by the Objector/ Applicant prays that the Respondent ,their children, her servants or agents be restrained from interfering with the occupation and use by his mother Phalguna Pamela Anyango Okul of all that matrimonial property situate at **Kabondo** in Homa Bay County as well as in **Kitale Municipality block 18/8119 / 13** pending the determination of the appeal to the Court of Appeal of this court's judgement dated 10th March 2020 and further pending the confirmation of the grant .
2. The Applicant has also prayed that the Respondent does provide the estates accounts dating back to 10th May 2006 to date.
3. The application is based on the Applicant's affidavit sworn on the same date. He deponed that after the decision of this court on 10 March 2020, the respondents together with her children have gone ahead to disturb the peaceful occupation by the deceased first widow namely Phelgona Okul of the matrimonial home at Kabondo in Homa Bay County.
4. He said that the Respondent has already lodged a notice of appeal against the said judgement and that pending the outcome of the appeal the Applicants should not be disturbed from utilising whatever they have been using and occupying both in the Kitale home as well as Homa Bay.
5. He went ahead to accuse the Respondents of visiting violence against her mother who is the first wife of the deceased herein and well advanced in years. He said that she was 75 years old. He further deponed that the Respondent has disposed part of the Kitale property to other third parties without awaiting the grant to be confirmed and that if she is not stopped the estate stands to suffer irreparable loss.
6. The Respondent in her replying affidavit dated **23rd July 2020** has denied the Applicants averment and that the only time she went to the matrimonial home at Kabondo in Homa bay was during a funeral of a relative one Titi Okul. She attached some letters from the area chief indicating that there was no violence visited upon the Applicant's mother who is her co -widow.
7. She also denied that she has ever disposed some of the estate properties after this courts judgment.
8. The supplementary affidavit of Pamela Phelgona Okul dated **1st October 2020** gives chronology of what she has gone through in the estate including her marriage with the deceased and the coming in of the Respondent. She accused her of many ills in the family and that she was not happy with the judgement of this court dated 10th March 2020 and is proceeding to appeal against it.
9. The Respondent in her further affidavit sworn on 10th August 2020 has attached some photos showing the homestead and the development undertaken by one of the purchasers.
10. The parties were then ordered to file written submissions which the court has perused. Counsel for the Applicant essentially submitted that unless the orders are granted her client who is now a senior citizen stands to suffer mental anguish that cannot be compensated in any way.
11. The Respondent on the other hand submitted that the application is unmeritorious and the same should not be allowed. She denied that the Respondent has in any way obstructed the use of the estate by the Applicant or her mother. She submitted that the issue of the accounts is neither here nor there as both families have been utilising the estate from the date the deceased died.

ANALYSIS AND DETERMINATION.

12. Having perused the application herein, and this court being seized of the matter, it is abundantly clear that the parties herein despite being of the same family have a lot of historical issue and differences. The first widow who must be old did not attend court during the hearing challenging the will. It appears however from her affidavit that she resides at Kabondo the family rural home in Homa Bay County.

13. The Applicant through her son has asked this court to stop the Respondent and her agents from interfering with her peaceful use and occupation of the said home as well as the Kitale home. Unfortunately, there is no material placed before this court indicating that such alleged violence was visited upon her.

14. The issues raised by the 1st widow in her supplementary affidavit are evidentiary in nature. She speaks of her marriage with the decease, issues to do with the death of her son and the exhumation of her body and lays the blame on the co -widow. These are issues she ought to have raised during trial. For now, the same may not be helpful to her.

15. There are two letters from the area chief Ramula Location indicating that he was not aware of any dispute between the two houses. Further, there is no evidence that the Applicant made a report to any police station whether in Homa bay or Kitale indicating a Commission of a Criminal offence.

16. The real issue which ought to be undertaken by the estate is to have the grant confirmed. This should be able to settle the historical disputes between the two houses. The judgement of this court found the will to have been genuine. The Applicants have suggested that they intent to appeal against the same. This is a constitutional right. The estate however ought to move on pending the outcome of the intended appeal.

17. There is no evidence or any substantive material evidence to indicate any prejudice the Applicants stand to suffer should the grant be confirmed.

18. Meanwhile, this court has not distributed the estate. The parties should await the outcome of the distribution. None of the parties have a legal right to harass or intimidate any of the beneficiaries whether at Kitale or Kabondo home in Homa bay. At any rate the government machinery is available to protect all and sundry.

19. It is also noted the estate has had endless wrangles which have caused great acrimony within the two families. There must be an end to these and the only legal option is for the administrators to have the grant confirmed. Any party aggrieved should then have the liberty to move the relevant court, whether this court or the Court of Appeal.

CONCLUSION

20. In the premises, the application is allowed only to the extent that the parties should utilise and stay where they have been as at 10th March 2020. The respondent nor her children nor any other family members should harass the first widow Phelgona Pamela Okul in her matrimonial home at Kabondo or Kitale. Similar orders apply to the Applicants against the Respondents and her house.

21. The Administrators should within the next 60 days apply for the grant to be confirmed.

22. The issue of the accounts shall await the decision to be made at the level of confirmation of grant.

23. Orders accordingly.

Dated, Signed and Delivered at Kitale this 28th day of October 2020.

H. K. CHEMITEI

JUDGE

28/10/2020