



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAMIRA

PROBATE & ADMINISTRATION CAUSE NO. 213 OF 2015

IN THE MATTER OF THE ESTATE OF JOASH MANYARA MAOGA (DECEASED)

BETWEEN

RAEL NYABOKE MANYARA.....PETITIONER/APPLICANT

=VRS=

1. DAVID KOMBO MANYARA.....1ST OBJECTOR/RESPONDENT

2. ANDREW BARONGO MANYARA.....2ND OBJECTOR/RESPONDENT

RULING

This ruling pertains to the summons dated 15th July 2020 which seeks orders as follows: -

“1. THAT this application be certified urgent and service in the first instance be dispensed with.

2. THAT pending inter-parties hearing of this application there be an order of injunction restraining the Respondents by themselves, their servants, agents or persons acting under their instructions from dealing, taking possession, disposing of, cultivating, building or otherwise intermeddling with the deceased’s estate more particularly parcel title No. ISOGE/KINENI/13 not in their possession and control at the time of filing the petition herein.

3. THAT pending confirmation of the grant of letters of Administration issued on 12th March 2020, there be an order of injunction restraining the Respondents by themselves, their servants, agents or persons acting under their instructions from dealing, taking possession disposing of, cultivating, building or otherwise intermeddling with the deceased’s estate more particularly portion of title No. ISOGE/KINENI/13 not in their possession and control at the time of filing the petition herein.

4. THAT office in charge (OCS) Manga Police Station do ensure compliance of the orders given herein.

5. THAT the Respondents be punished for intermeddling with the estate of the deceased.

6. THAT costs of this application be provided for.”

The application is expressed to be brought under Sections 45 and 47 of the Law of Succession Act and Rules 49, 59 (5) and 73 of the Probate and Administration Rules and is supported by the affidavit of Rael Nyaboke Manyara sworn on 15th July 2020 in which she depones, interalia, that: -

“5. THAT on the 29th day of June 2020 the Respondents without any order from court, forcefully entered into portions of Land title No. ISOGE/KINENI/13, started cultivating the same and is threatening to erect structures thereon. Annexed and marked "RNM3" are photographs showing the homestead they have invaded.

6. THAT I reported the matter to the Area Chief and Manga Police Station who warned them to desist from their actions but they have remained adamant.

7. THAT the Respondents have portion within the said parcel title No. ISOGE/KINENI/13 where they put up homesteads and have been cultivating thereof even prior to the filing of this petition.

8. **THAT** the Respondents' actions are meant to undermine the ruling and orders made by this court on 12th March 2020.
9. **THAT** the Respondents' actions are ill advised and calculated to cause disharmony among the beneficiaries of the estate of the deceased so as to fail the intended mediation process.
10. **THAT** the Respondents are chest thumping that they have been appointed as administrators of the estate of the deceased and can deal with the estate as they pleases. Annexed and marked "RNM4" is a copy of the letter by the 2nd Respondent.
11. **THAT** the actions of the Respondents are against the Rule of law as they are threatening to take over possession of the estate without the order of distribution from this Honourable Court and thus interfering with other beneficiaries.
12. **THAT** the Respondents are acting dishonestly and to the detriment of other beneficiaries of the estate by their actions before the final orders of this Honourable Court.
13. **THAT** I swear this affidavit in support of the summons herein seeking injunction to restrain the Respondents from their illegal actions of taking over possessions of the deceased's estate.
14. **THAT** the Respondents are intermeddling in the estate of the deceased contrary to the law.
15. **THAT** I am informed by my Advocates M/s Ombachi & Co. Advocates which information I verily believe that neither the Respondent's appointment as administrators to the deceased's estate nor the Responsibilities given to the Administrators under section 83 of Law of Succession give them the right to intermeddle the estate of the deceased by taking possession as they are doing.
16. **THAT** the facts herein deposed to are known to me of my personal knowledge save that is based on information and belief sources whereof have been fully disclosed."

In response to the summons the respondents who together with the applicant are co-administrators of the estate, filed grounds of opposition and a replying affidavit sworn by Andrew Barongo Manyara on 28th July 2020. Their contention as stated in the grounds of opposition which I shall quote verbatim, is that: -

- “1. **The Application** is fatally defective, incompetent, misconceived, bad in law and should be struck out.
2. **That** a grant was issued on the 30th April, 2020 to **DAVID KOMBO MANYARA, ANDREW BARONGO MANYARA, RAELE NYABOKE MANYARA and EBISIBA NYAGETARI MANYARA.**
3. That section 83 of the Law of Succession Act provides for duties of personal representatives which includes:-
 - (a) to provide and pay out of the estate of the deceased, the expenses of a reasonable funeral for him;
 - (b) to get in all free property of the deceased, including debts owing to him and moneys payable to his personal representatives by reason of his death;
 - (c) to pay, out of the estate of the deceased, all expenses of obtaining their grant of representation, and all other reasonable expenses of administration (including estate duty, if any);
 - (d) to ascertain and pay, out of the estate of the deceased, all his debts;
 - (e) within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
 - (f) subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be;
 - (g) within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration;
 - (h) to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
 - (i) to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration.

4. **That in view of paragraph 3 (b) above, it is pertinent that the administrators are obligated to gather and preserve the estate of the deceased in readiness of distribution upon confirmation of the grant.**
5. **That intermeddling cannot arise by reason that the administrators are carrying out their duties as provided by the law of Succession.**
6. **That the Petitioner has not satisfied the grounds necessary for the granting of the equitable relief of injunction.**
7. **The Petitioner's application lacks merit and should be dismissed.**
8. **The Petitioner has disguised an Environment and Land Court Claim on behalf of an undisclosed person in this succession matter, and accordingly the application should be struck out."**

The application was canvassed by way of written submissions and this ruling was scheduled to be delivered on 6th November 2020 but was deferred thrice due to exigencies of work and for that I apologise to the parties. I have now had opportunity to consider the application, the response thereto and the rival submissions.

The applicant and the respondents are co-administrators in the estate to which these proceedings relate. As correctly stated by the respondents the powers and duties of administrators are spelt out, inter-alia, in **Sections 82 and 83 of the Law of Succession Act**. Those powers are very wide and are intended to protect the interests of the beneficiaries as well as other persons who may otherwise be interested in the estate. However, it is important to note that much as the administrators have wide powers to deal with the estate, **Section 55 (1) of the Act** and **Section 82 (b) (ii)** restricts distribution of the capital assets of the estate before confirmation of the grant. **Section 55 (i)** provides: -

"(1) No grant of representation, whether or not limited in its terms, shall confer power to distribute any capital assets, or to make any division of property, unless and until the grant has been confirmed as provided in section 71....."

Section 82 (b) (ii) is emphatic that: -

"(b)

(ii) no immovable property shall be sold before confirmation of the grant."

In all their dealings with the estate the persons appointed as administrator must pay heed to their powers and duties as set out in **Sections 82 & 83 of the Act: Sections 45 and 95 of the Act** create offences where those powers and duties are abused and/or neglected. More specifically **Section 45** prohibits intermeddling with property of a deceased person and makes it an offence punishable under the law. Therefore, in so far as the application seeks to restrain the respondents from disposing of, building or otherwise intermeddling with LR ISOGE/KINENI/13 pending the confirmation of the grant then it has merit. Any dealings or any form of taking possession that would waste or in any manner be detrimental to the parcel of land would also amount to intermeddling. That of course is not to be confused with the duty provided in **Section 83 (b) of the Act** to get in all the free property of the deceased or the duty to distribute the estate provided in **Section 83 (f)** which duty is subject to **Section 55 (1)** which restricts distribution of the capital assets before confirmation of the grant. At the hearing of the protest the beneficiaries of the estate including the administrators intimated that they wished to reach an amicable settlement on the distribution of the estate and for that reason this court deferred its judgement on the protest and referred them to mediation. This court is yet to get the decision of the mediator on the agreed mode of distribution so as to enable it to confirm the grant. Until then the administrators must refrain from any conduct that will waste the estate. To that end the respondents are hereby accordingly restrained whether by themselves, their agents or servants from disposing, sharing, distributing, building, or dealing or otherwise intermeddling with the deceased's estate and more particularly LR ISOGE/KINENI/13 until the grant is confirmed by this court. If there be any intermeddling the applicant shall be at liberty to report the same to the police for investigations and necessary action as provided in **Section 45 of the Law of Succession Act**.

In light of the nature of these proceedings, parties shall bear their own costs. It is so ordered.

Signed, dated and delivered virtually via Microsoft Teams at Nyamira this 26th day of November 2020.

E. N. MAINA

JUDGE