

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO 2 OF 2018

IN THE MATTER OF THE ESTATE OF SAVERIO MAKOKHA MUSUMBA (DECEASED)

RULING

1. The application I am called upon to determine is dated 3rd December 2018. It is by Ruth Mutende Watsiera. She is a widow of the deceased. She seeks orders to restrain the administrator from interfering with her peaceful use and stay on a property known as N/Wanga/Koyonzo/650 and to be reinstated to that property. She avers that she was evicted from the property on 4th May 2015, and reported to the police in OB/No. 04/05/18.

2. In reply the administrator avers that the applicant was not living with the deceased prior to his death. He avers that the deceased had not settled the applicant in any of his properties prior to his death, unlike what he had done with his other wives, and therefore she had no home of her own. He states that after the deceased died he prevailed on other family members to allow the applicant put up a temporary home on N/Wanga/Koyonzo/650. After that she lived peacefully with everybody until sometime in May 2018 when his child died and there was a misunderstanding with her. She demolished her temporary structure and moved the materials away. She reported the matter to the police and the police did not act further after she owned up to have had demolished her temporary structure herself. She was then shown another piece of land, N/Wanga/Namamali/6 to put up a temporary shelter. He has also denied stopping collecting rents from some property.

3. The application was argued orally on 17th December 2018, when both sides articulated their respective positions.

4. I note from the record that the administrator was only appointed on 22nd October 2018 and a grant issued on 14th November 2018 despite the deceased having died in 2015. The primary role of the administrator is to collect the assets of the estate with a view to thereafter distribute them amongst the survivors of the deceased.

5. From the counter-accusations being exchanged by the parties, I may not be able to tell who is telling the truth. What is plain is that the applicant had a structure within N/Wanga/Koyonzo/650. She left the land under circumstances that are the subject of the dispute.

6. I am sitting as a probate court. As such my sole responsibility is to preside over the distribution of the estate of the deceased. It should not be my role to determine who should occupy and use which property pending distribution. The jurisdiction to settle such matters lies with the Environment and Land Court. However, as the applicant is an acknowledged widow of the deceased it is only fair that she should be allowed to settle on estate property pending distribution. To avoid disputes of the nature of the instant one, the administrator ought to move quickly to have the estate distributed so that every survivor gets their piece of land. That way petty quarrels would be obviated. The administrator need not wait for six months to expire before he acts. The deceased has been dead since 2015.

7. I shall dispose of the said application in the following terms -

(a) That I direct the administrator to let the applicant back onto N/Wanga/Koyonzo/650 and to put up a temporary structure to reside in pending distribution of the estate herein;

(b) That upon being allowed back on N/Wanga/Koyonzo/650 the applicant shall keep the peace and the court shall order her removal should any misconduct by her be reported;

(c) That administrator shall not interfere with the applicant's quiet temporary occupation of the said property and shall report any misconduct by her to the court;

(d) That the administrator shall move forthwith to have his grant confirmed so as to distribute the estate;

(e) That the matter shall be mentioned after thirty (30) days to confirm filing of the confirmation application;

(f) That the mention date shall be given in open court at the delivery of this ruling;

(g) That each party shall bear their own costs; and

(h) That any party aggrieved by the orders that I have made herein above shall be at liberty to move the Court of Appeal appropriately within twenty-eight (28) days.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 10th DAY OF April, 2019

W. MUSYOKA

JUDGE