



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

SUCCESSION CAUSE NO. 226 OF 2010

IN THE MATTER OF THE ESTATE OF THE LATE JOHN CHEGE GITHIRA ALIAS JOHN MWANGI - (DECEASED)

TIRAS MBURU CHEGE.....OBJECTOR /APPLICANT

VERSES

PETER WAIRIRI CHEGE

KINYANJUI CHEGE

SAMWEL MBUGUA CHEGE}.....RESPONDENTS/ADMINISTRATORS

RULING

1. The chamber summons application dated 29th July, 2019 by the applicant **Tiras Mburu Chege** prays that;

(a) this court stays the orders issued on the 22nd July, 2019 in which it granted temporary suspension of the orders it had issued in the application dated 14/12/2018 which had barred the Respondent Samwel Mbugua Chege from dealing with Land Parcel Number Nyandarua /south kinangop/16158.

(b) That the court does set aside the said orders and permit the Applicant to file a replying affidavit out of time.

2. His supporting affidavit dated the same date explains that he was unable to file his response to the application dated 14/12/2018 because he was not feeling well. He has attached a copy of the intended replying affidavit in which he states that the same raises strong arguments against the Respondent's application.

3. He further states that should the respondent be allowed to dispose the suit land it will be difficult to further have the estate equitably distributed.

4. In his replying affidavit dated 26/9/19 the Respondent has deponed that the said application is frivolous and an abuse of the court process as the applicant was given time when this matter came up for trial on 15/5/19,26/6/19 and 22/7/19. He further states that the applicant has not demonstrated that he was unwell on the material day.

5. The court has perused the said application herein and is not inclined to allow the application to stay or set aside the orders issued on the 22nd July, 2019 for the simple reason that the Applicant has not demonstrated that he was unwell on the material day. He has not exhibited any document to support his allegation and thus in the absence of such material evidence this court is left to speculate which is abhorred in law.

6. The application to file the replying affidavit out of time is nevertheless allowed. This court will not lock out any material evidence especially taking into consideration that this is a family feud.

7. The court will not wish to touch on the other issues raised in the application since they have been raised in the main application dated 14/12/18 which is yet to be determined.

8. Suffice to state that there is no immediate prejudice to be suffered by the Applicant or the estate as the Respondent prima facie has a stake in the estate and should the application succeeds then the portion he alleges to have given out could as well be taken into consideration.

9. In the premises, the application is disallowed save that the applicant is granted 14 days from the date herein to file and serve his replying affidavit.

10. The Respondent shall have the costs of this application.

Dated, signed and delivered in open court at Kitale this 18th day of December, 2019.

H. K. CHEMITEI

JUDGE

18/12/19

In the presence of:-

Wanyonyi for the interested Party

Sabatia for the Respondent

Court Assistant – Silvia

Ruling read in open court.