



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

**P&A NO. 350 OF 2015**

**IN THE MATTER OF THE ESTATE OF SAWE MAINA (DECEASED)**

SUSAN JEPTEPKENY MAINA.....1<sup>ST</sup> APPLICANT

JAEL JEMASUNDE MAINA.....2<sup>ND</sup> APPLICANT

**-VERSUS-**

GILBERT KIPLIMO MAINA.....1<sup>ST</sup> RESPONDENT

REBECCA JEMELI SINGOEI.....2<sup>ND</sup> RESPONDENT

**RULING**

[1] There is a pending application herein dated **8<sup>th</sup> March 2018**. That application was filed pursuant to **Sections 45 and 47** of the **Law of Succession Act, Chapter 160** of the **Laws of Kenya** for orders, inter alia, that the Administrator herein **Elizabeth Maina**, who is now deceased be substituted by the two Applicants, **Susan Jепtepkeny Maina and Jael Jemasunde Maina**. When the matter came up for hearing on **23<sup>rd</sup> July, 2018**, Counsel for the parties intimated to the court the willingness of the parties to have the matter settled amicably; for which time was needed.

[2] In the interim, **Dr. Chebii**, Learned Counsel for the Applicant asked that prayers 3 and 4 of the subject application be granted pending settlement and/or disposal of the application. That request was strongly opposed by Counsel for the two Respondents, **Mr. Sambu** and **Mr. Korir**, whose contention was that the conditions for the grant of the orders sought have not been met. Their argument was that to issue the orders sought would exacerbate the situation on the ground and create needless conflict between the parties.

[3] I have looked at the prayers sought and note that Prayer 3 seeks orders that the Respondents, **Gilbert Kiplimo Maina** and **Rebecca Jemeli Singoei**, be restrained from intermeddling with the estate comprising of 224 acres of land; while Prayer 4 seeks an order commanding the beneficiaries to make use of all the arable part of the land equally, namely 13 acres each for farming and grazing. It is manifest therefore that the orders sought as drastic in nature and are the sort that can only be made after hearing each of the parties.

[4] Secondly, the orders sought, as crafted seem to involve the entire estate, when it is apparent that the deceased had in his lifetime distributed the estate equally as between the two houses; a fact that was conceded by **Dr. Chebii**. Hence it is evident that granting the orders sought would invariably impact on the half share that has already been given to the 1<sup>st</sup> house; over which there is no controversy. Besides, I would agree that the interests of justice would best be served by maintaining the present *status quo* pending hearing, if the matter can be fast-tracked.

[5] Accordingly, I would decline **Dr. Chebii's** request but direct that the matte be mentioned before the Deputy Registrar for the purpose of fixing of a hearing date on priority basis before any other Judge in the station.

Orders accordingly.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 25<sup>TH</sup> DAY OF JULY 2018**

**OLGA SEWE**

**JUDGE**