



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**SUCCESSION CAUSE NO. 457 OF 2010**

**IN THE MATTER OF THE ESTATE OF M'OKERA M'RAMARE (DECEASED)**

**M'NDEGWA NCHOKERA.....PETITIONER**

**Versus**

**SALOME KAINDA M'RINTARA.....PROTESTOR**

**RULING**

[1] The significant order sought in the application dated 19<sup>th</sup> April 2018 is inhibition upon LR. NO. NYAKI/THUURA/1902 until this cause is heard and finalized. The application which is expressed to be brought under section 68(1) of the Land Registration Act is pre missed upon the grounds set out in the application, supporting affidavit and the submissions filed herein, The major reason for applying is because the Petitioner brought strangers into and showed them the estate land with the view of selling it. The protestor stated that sale of the estate land will defeat her claim, thus, rendering it otiose. In her submissions, she stated that:-

**...there are strong rumours thst the Respondent is currently trying to sell the suit land''**

The protestor averred in a further affidavit that she is a grandmother taking care of an orphan who is blind. She also lives on the suit land in an old house that is crumbling down. She therefore sought to be allowed to build a small house next to an older one described above as the case is taking long to conclude.

[2] The Petitioner opposed the application through grounds of opposition and submission filed. He claimed that he has no capacity to transfer the suit land as it is registered in the name of the deceased. As such, there is no threat to the estate land. In any event, the protestor is an active participant in these proceedings which is partly heard and should be allowed to conclude. She is always aware of what is happening in the proceedings. For those reasons, he saw the application before court as being merely an abuse of process and should be dismissed.

**ANALYSIS AND DETERMINATION**

[3] Upon thoughtful consideration of the application before me, I find two matters to carry great importance. First, the orders sought are to conserve the estate property. And, two, these proceedings are partly heard. With regard to the fist matter; the applicant seems to rely on "strong rumours" to seek for inhibition of the estate property. Needless to state that a court of law will not act on rumours however strong they may be. Courts of law act on real evidence or actionable material with evidentiary value. A rumour does not fit the test. Nothing shows that the Petitioner is attempting to sell the land. In any event, the suit land is registered in the name of the deceased, and the Petitioner is aware that if he attempts to sell it before confirmation- and he should be so warned- he will be committing a criminal offence and will be dealt with accordingly. I however, warn that any On the other matter; these proceedings are partly heard and fall in the category of old cases which should conclude by end of year. This is the policy direction given by the Honourable the Chief Justice and the President of the Supreme Court as part of Sustaining Judiciary Transformation framework. Accordingly, I dismiss the application and order that the matter be heard on the basis of priority. I take this course in full understanding that all issues in controversy will be determined completely in the trial. It is so ordered.

**Dated, signed and delivered in open court at Meru this 29<sup>th</sup> day of October 2018**

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**F. GIKONYO**

**JUDGE**

**In presence of**

Mokua for Mwenda for petitioner

Kimathi for Kithaka for protestor

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**F. GIKONYO**

**JUDGE**