



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
SUCCESSION CAUSE NO. 449 OF 2014
IN THE MATTER OF THE ESTATE OF
SIMEON CHIERA NGACHA (DECEASED)

RULING

This matter now comes up for the application for the 1st objector/applicant dated 4th April, 2017. The same brought under Section 73 of the Law of Succession Act, CAP 160, seeks that this court do issue orders as follows: -

- (i) A temporary order of stay of the exparte orders issued on 8th March, 2017 and the subsequent orders issued on 3rd Aril, 2017 pending determination of this application.**
- (ii) That this Honourable court be pleased to review the orders issued on 3rd April, 2017 mandating the police to foresee Land Parcel No. Eldoret Municipality Langas Block II Plots 165 and 166.**

This application was opposed by the plaintiff who duly filed a replying affidavit to the same on 24th April, 2017.

While arguing the application, Ms. Koech submitted that the property affected by the orders of 3rd April, 2017 do not form part of the estate of the deceased. That the petition as filed and the Affidavit on support of same do not show plot numbers 165 and 166 as being part of the assets of deceased and at no time did the deceased own these property. But that same are owned by Ruth Wangui, one of the wives of the deceased who pays rates for the same. The applicant attached a sale agreement showing she bought the property on 10th July, 1978. Further, that though 1st Respondent has been residing on the property as wife of the deceased, the property do not form part of the estate of the deceased and there is need to revoke the order.

And in reply to the application, Ms. Nasiloli for the Respondent, submitted that the 1st order has been spent as there is no construction going on. Also that the orders of 2nd March 2017 were made after there was no reply filed. And that as to whether plot numbers 165 and 166 are not part of the estate of deceased, the same ought to be specifically proved. Counsel denied that the 2 property have not been included as there is a problem with the description of the properties on the petition.

Counsel also submitted that the eviction was against 3rd parties, and that on the agreements attached, issues of fraud and forgery have been raised against the applicant and her 2 sons. Finally, that the orders were only meant to restrict the intermeddling with the property and that in any case, the applicant has never been in occupation of the property. There is therefore need to preserve the estate.

I have considered the application and the submissions made by the learned counsel for both sides. The chronology of this matter starts with the orders issued by the court on 8th March, 2017 to the effect that the O.C.S. Langas Police Station do effect eviction of the Respondents, their agents and or servants from the said plot numbers 165 and 166. The import of the order was to preserve the said 2 plots pending hearing interpartes of the said application fixed for 26th June, 2017. And the orders (interim orders) were issued upon the court being convinced by the applicant, Milka Waithera Mbugua, that there were developments of certain structures being carried out on the sad 2 plots. It is clear from the submissions now made before court, that the said developments have stopped.

The present application dated 4th April, 2017 seeks to have the said interim orders of 8th March 2017 stayed. The basis of this application is that the 2 plots allegedly belong to the 1st Objector/Applicant Ruth Wambui, and do form part of the estate of the deceased. In opposing this application, it has been alleged by the Respondent that in fact the 2 plots form part of the estate and it is the Respondent (Milka Waithera Mbugua) who has always been in occupation of the 2 plots.

Discharging the orders of 8th March, 2017 therefore would mean that the construction aggrieved of by the Respondent to this application would continue even before the issue of whether it is part of deceased's estate is determined. I am not convinced that this would be proper. There is need to preserve this property so as to avoid any wastage by either of the parties herein. It is for this reason that I do not find merit in this application dated 4th April, 2017. I dismiss it with costs to the Respondent(s). Orders accordingly.

DATED, SIGNED and DELIVERED at ELDORET, this 20th day of June, 2017.

D.O. OGEMBO

JUDGE

Ruling read out in open court in presence of: -

1. Ms. Chesoo for Respondent and
2. Ms. Mufutu for Mr. Njuguna for Applicant

D.O. OGEMBO

JUDGE