



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 1129 OF 2006

IN THE MATTER OF THE ESTATE OF CHARLES CHEMIMOI KIMURGOR (DECEASED)

RULING

1. I am called upon to determine two applications, dated 17th November 2016 and 20th March 2017.
2. The application dated 17th November 2016 is brought at the instance of Matilda Chemeli Bachia, who is one of the administrators of the estate. It seeks that the court finds the respondent, Ibrahim Hussein Kimurgor, a beneficiary and son of the deceased, to have violated the orders made herein on 10th December 2013 and 23rd May 2014, and that he be committed to civil jail therefor. It is further sought that he be given opportunity to purge the alleged contempt, that the orders herein be served on security authorities within the Uasin Gishu area, that the court do furnish the courts where criminal cases against the respondent are pending with information relating to the estate, that the respondent be ordered to report to the officer commanding the Kapsoya Police Station, that security officers in the relevant areas be summoned to apprise the court on the relationship between the respondent, the estate and the other beneficiaries of the estate, among other orders.
3. The grounds upon which the application is founded are set out on the face of the application. The facts are deposed in the affidavit in support sworn by the applicant on 17th November 2016. Essentially, it is averred that the orders the subject of the application have been disobeyed by the respondent who has seized assets without authority, which acts have generated criminal cases against him. He is also said to have damaged property and assaulted tenants. He is also said to have threatened his mother, who is one of the administrators, and insulted the other administrators and beneficiaries. She has attached to her affidavit copies of the orders said to have been disobeyed, as well as documents relating to the criminal cases that the respondent is facing before several courts, among other documents.
4. The respondent has responded to the application through his affidavit sworn on 3rd January 2017. He acknowledges the orders in question, saying that they ordered him to stay away from the matrimonial home and not the entire estate. He avers that he has obeyed the order by staying away from the matrimonial home. He says he only entered the home once at the invitation of his mother for the purpose of a family meeting. He contends that if he indeed disobeyed the order by entering the home, then his mother should have been the one swearing the affidavit in support, rather than the deponent who resides elsewhere. He has attached documents to support his case.
5. There is another replying affidavit by Hellen Cheron Kimurgor, sworn on 14th January 2017. She is the widow of the deceased and the mother of the applicant and the respondent. She avers that she was forced to move out of the matrimonial home in Uasin Gishu despite the said orders being in force. She points to threats by the respondent and his conduct as the cause. She also accuses him of being abusive and violent towards her, his siblings and the workers.

6. The application dated 20th March 2017 seeks transfer of this cause to the High Court of Kenya at Eldoret. It is brought at the instance of Ibrahim Hussein Kimurgor. He states that the bulk of the estate is situated within Uasin Gishu County, and the family resides there. He argues that it is expensive for them to keep travelling to Nairobi for the matter. He points to seven criminal cases that have been brought against him by his siblings, all of which are before courts at Eldoret, and all of which relate to the estate.

7. There are two replies to the application, through affidavits sworn by Matilda Chemeli Bachia and Hellen Cherono Kimurgor. Their principal arguments are that the majority of the survivors of the deceased are resident in Nairobi and would prefer that the matter remains here. They also state that the estate is not wholly within Uasin Gishu for there are assets within Nairobi and Kisumu.

8. There are directions on record that the two applications be disposed of by way of written submissions. The parties have filed detailed written submissions, which I have had occasion to read through and note the arguments made therein. I have also had occasion to read through the authorities cited.

9. Contempt of court, the law is clear as stated in a number of cases. Civil contempt is quasi-criminal in nature. The basis for this is that there are criminal sanctions for a person found to be in contempt. He can be sent to jail or have his property sequestered. The evidence of breach or violation must therefore be very strong, meaning that the standard of establishing the breach must be above the standard in civil cases. It also means that material upon which the applicant mounts his case must be such as to establish such a case.

10. The orders complained of relate to the matrimonial home. They bar the respondent from entering the same until further orders of the court. The matrimonial home can only mean the place that the deceased and the respondent's mother had established as their home or homes. The orders were made for the benefit of the respondent's mother, to protect her from harassment by the respondent. For violation of that order to be established, there must be an allegation that the respondent on a particular day entered the matrimonial home contrary to the terms of the order.

11. The application has been brought by someone other than the person for whose benefit the orders were made. She does not make a categorical statement as to when and how the respondent allegedly breached the order by entering the matrimonial home. The beneficiary of that order has herself sworn an affidavit. Although she alleges that she was forced to leave the matrimonial home to reside elsewhere, she blames the same on the conduct of the respondent and threats from him. She does not allege that he did enter the matrimonial home on any particular date. Her claims are vague, and no doubt do not make out a case to support the allegation of contempt of court. The applicant makes allegations that paint the respondent as violent, aggressive and disruptive. He is said to have accumulated several criminal cases in the process. However, none of the allegations and the criminal cases touch on entry by the respondent into the matrimonial home.

12. I am not satisfied that a case has been made out for citing the respondent for contempt of court. The said application seeks several consequential orders. I believe that with the disallowance of the application for the citation of the respondent for contempt of court, those other prayers should fall by the wayside.

13. On the transfer of the matter to the High Court at Eldoret, I do note from the petition herein that the bulk of the estate is situated within Uasin Gishu County. Nine landed assets are listed. Six are within Uasin Gishu, one within Nandi County, one within Kisumu County and one within Nairobi. The estimated value of the property within Uasin Gishu is put at Kshs. 47, 600,000.00; the Nairobi property is estimated to be valued at Kshs. 4, 500, 000.00; the Kisumu property is valued at Kshs. 5, 000, 000.00, while the Nandi property is estimated to be valued at Kshs. 50, 000.00. It is a well-established principle of civil law, for succession proceedings fall within the bracket of civil proceedings, that such proceedings ought to be initiated at the court nearest to the area where the property is situated. The bulk of the estate is situated within Uasin Gishu County; the nearest High Court is at Eldoret, so the cause ought to have been initiated at that court.

14. It is pleaded by the respondents that a majority of the survivors reside in Nairobi, save for the widow

and the son. The widow is based at Uasin Gishu, it is alleged that the son resides in London, but he claims to be a resident of Uasin Gishu. This should be weighed against the critical issues in the estate. They all appear to revolve around the property within Uasin Gishu. The litigation that has been waged in this cause relate to that property. All the criminal cases against the son relate too to that property and are all before courts at Eldoret. The administrators, in the application dated 17th November 2016, seek orders against Chiefs and Police Commanders in the Uasin Gishu area, which orders they believe would assist in the enforcement of the orders made herein. All these would suggest that there is force in the applicant's case, that this cause would be best handled at Eldoret, so that should the court wish to summon Chiefs or police commanders in that area, the said government officers would be able to comply with whatever orders the court may make with relative ease, as opposed to where the officers have to come to Nairobi.

15. The orders that I shall make in the circumstances are as follows –

(a) That I have not found merit in the application dated 17th November 2016 and I have hereby dismissed it;

(b) That I have been persuaded to grant the orders sought in the application dated 20th March 2017, which I hereby allow;

(c) That for avoidance of doubt I do hereby direct that the succession cause herein be transferred to the High Court of Kenya at Eldoret for final disposal; and

(d) That costs shall be in the cause.

DATED, SIGNED and DELIVERED at NAIROBI this 8TH DAY OF DECEMBER, 2017.

W. MUSYOKA

JUDGE