



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
P&A NO 29 OF 2013
IN THE ESTATE OF JOSPHAT KARIUKI NGURE (DECEASED)

RULING

1. The deceased to whom the estate relates died intestate on 7th June 2008. He was survived by his wife and eight children. The applicant the widow to the deceased petitioned for letters of administration on 18th April 2013. Prior to the said petition the applicant had cited the respondent who is her son for inter meddling with the deceased's estate. As a resultant to which Justice Ogola on 15th January 2013 issued a restraining order to the fact that;

“Nobody should interfere with the deceased estate being property L.R. No. 7463 and 7462/5. Any activities in the property should cease forthwith and the defendant must stop all acts of construction in the said property pending the determination of succession.

The widow of the deceased shall continue to stay in the property without any disturbance from any of her children.”

2. The applicant in an application dated 16th July 2014 sought the assistance of the Court to effect the Orders given on 15th January 2013. The argument by the applicant was that the respondent has defied the order issued on 15th January 2013 and has continued demolishing, constructing and pulling down trees in the said estate to make charcoal for sale. The Court in its ruling of 31st July 2013 ordered that;

“The objector/ respondent herein David Ikonya Kariuki be summoned to appear before this court to show cause why he should not be cited for contempt of the court order issued on the 15th January 2013.

The objector /respondent be ordered to vacate the petitioner/applicant's matrimonial home forthwith.”

3. On 1st August 2014 the respondent sought stay, review and setting aside of the orders of 31st July 2013 by Justice L. Kimaru. The applicant's application was allowed in part on 4th August 2014 and the respondent was granted a temporary stay pending *inter partes* hearing of the application dated 1st August 2014. The orders by justice Kimaru given on 31st July 2013 were set aside and the respondent was granted leave to defend the application dated 16th July 2014.
4. On the 24th Of November 2014 this Court consolidated succession cause 72 of 2012 with succession cause no. 29 of 2013 as the parties were the same and the matter proceeded in this cause.

5. The application dated 16th July 2014 came for hearing on the 3rd of December 2014 and advocates made oral submissions. The applicant sought orders to have the respondent vacate the matrimonial home. The application was opposed.
6. In her affidavit filed on 16th July 2014 the applicant depones that prior in succession cause 72 of 2012 she had sought to restrain the respondent from meddling with the estate of her late husband and a restraining order was issued on the 15th January 2013. The respondent filed an objection which is yet to be heard. Her reasons for seeking the current orders is that the respondent has become uncontrollable he demolishes and constructs the sections of the estate as he wishes, that the respondent is a man of means running his own insurance brokerage and can afford his own home; that as a surviving spouse of the late Josphat Kariuki Ngure she has a life interest in the whole residue of the net intestate estate and that she should be allowed to live in peace in her home now that she is 86 years old and wishes to enjoy her last years in peace; that the matrimonial home is a beautiful colonial home purchased by her late husband from the colonial masters. However the respondent who is her son has demolished sections of her home barricading himself and his family in a section of her house without her consent and the same was affecting her both physically and physiologically and emotionally.
7. The respondent in his response alleges that the applicant was being used as a proxy by his brethren's to declare war against him and evict him from the suit property. He alleged that it was his sister in law and sister Jean who defied the court order and had been constructing their home and chicken shed respectively and even alleged being assaulted by his brother Thomas Kariuki and sister Jean. In his opinion the problems started when he opposed the development of residential houses proposed by the family members. On the issue of construction he stated that the house was in a deplorable state and had agreed with the applicant to renovate the same on 15/10/2011 which was subsequently agreed on by the family members during the meeting held on 5/11/2011. Accordingly that the order issued on 10/1/2013 was issued in his absence and he appeared before the court on 11/1/2013 and the learned Judge ordered the family to consult. On 28/1/2013 Justice Kimaru directed the parties to file the petition for letters of administration 1st and the respondent subsequently filed his objection seeking to be appointed one of the administrators.
8. Parties made oral submissions in Court which I have considered. The issue for determination is whether the respondent should vacate the matrimonial home. From the submissions made by his Counsel he has no problem moving but his concerns are that he has spent money to renovate the house, his siblings want him out for reasons that they want to carry out a project which he is opposed to. The applicant being the wife of the deceased has the right to live in the matrimonial home without interference. It is apparent that her relationship with her son has gone sour. She seeks to live in peace being an old lady. I do appreciate the respondent's concerns on the money he alleges he has spent in renovating the matrimonial home. However this is a matter that will be dealt with during the distribution of the estate and not at this stage. Considering the advance age of the applicant she should be allowed to live in peace in her matrimonial home. The respondent appears to be a man of means and should look for alternative place to reside. I therefore order that he vacates the matrimonial home of the applicant. It is unfortunate that the parties in this succession cause cannot agree. I note there is an objection pending on the petition for Grant of Letters of Administration. Pending the hearing of the said objection the orders granted by Justice Ogola on 15th January 2013 shall remain in force. No orders as to costs. It is so ordered.

Dated, signed and delivered this **29th** day of **January** 2015.

R.E. OUGO

JUDGE

In the presence of:-

.....For the Applicant

.....For the Respondent

.....Court Clerk