

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 1385 OF 2010

IN THE MATTER OF THE ESTATE OF ISAACK GIDRAPH NJUGUNA - (DECEASED)

RULING

1. The application dated 18th June 2013 seeks orders that the respondent be punished for intermeddling and misapplying the applicant's matrimonial home and that he be evicted from the matrimonial home.
2. The grounds upon which the orders are sought are set out on the face of the application and in the affidavit of the applicant sworn on 18th June 2013. Both parties are administrators of the estate of the deceased. The respondent is accused of having moved into the matrimonial home of the applicant and has refused to vacate it. She asserts that she is entitled to a life interest in the same. She further accuses him of misapplying, intermeddling and infringing on her rights.
3. The respondent replied to the application through his affidavit sworn on 22nd October 2013. He raises the issue of the validity of the marriage of the applicant to the deceased. He asserts that as the applicant was not a spouse of the deceased, the issue of her having a matrimonial home with the deceased does not arise. He avers to have been living at the said home with the deceased, while the applicant was living in abroad. He denies moving into the house after the demise of the deceased. He asserts that the house was solely acquired by the deceased.
4. It was directed on 27th May 2014 that the application dated 18th June 2013 be disposed of by way of written submissions. The applicant's submissions are dated 11th June 2014 and were filed in court on 23rd June 2014. The respondent's submissions are dated 4th July 2014 and were filed in court on 7th July 2014. I have carefully perused through the arguments made in both sets of submissions.
5. The principal issue for determination is whether the house standing on Ngong/Ngong/35949 is the applicant's matrimonial home, and if so whether the respondent should move out.
6. The applicant alleges that the said property is her matrimonial home, the home she intended to relocate to from her sojourn in the United States of America (USA). She appears to take the position that the court had, in its ruling of 29th April 2013, held that that was her matrimonial home.
7. The respondent's position appears to be that the applicant never was a wife of the deceased and consequently the said property cannot be her matrimonial home. He asserts that the property was acquired by the sole efforts of his father and the applicant had nothing to do with it. He avers that he moved into it with his father and the rest of the family in 2007. He lived there with the deceased while the applicant was away in the USA and she only evinced an interest in the house after deceased's demise.
8. The applicant does not give an indication as to when she first occupied the house and when she

went to the USA. She has not responded to the respondent's allegation that he moved into the house in 2007 with his father and the other children. She alleges that he moved into the premises after the deceased's death in 2010, but she gives no indication as to where he moved in from.

9. It is suggested that in the ruling of 29th April 2013 I had held that the said property was a matrimonial home constructed by the deceased and the respondent jointly. I have perused the said ruling, there is nothing in there where such a finding was made. The court on the issue of the house stated that there was nothing placed before it to contradict evidence that the house could have been constructed by the deceased in collaboration with the applicant. That is not the same as holding that the property was jointly acquired and constructed by the two of them.
10. It is my conclusion that I cannot from the material before me hold that the Ngong house was the matrimonial home of the applicant. To my mind, the issue as to whether the said property was a matrimonial home can only be resolved from evidence presented orally and tested in cross-examination. It is a matter that cannot be determined on the basis of affidavit evidence only.
11. The respondent is accused of intermeddling with estate property. He and the applicant are the administrators of the estate of the deceased. The property of the deceased vests in them jointly by virtue of Section 79 of the Law of Succession Act. Intermeddling is defined in Section 45 of the Act to mean interference with the property of a dead person by persons who do not have authority over the property. Authority to deal with estate property is said to emanate from, among other sources, a grant of representation. The effect of Section 45 of the Act is therefore that the holder of a grant cannot be an intermeddler.
12. In view of everything that I have stated above, I come to the conclusion that the application dated 18th June 2013 is not well conceived. It is not for granting and I hereby dismiss the same. There shall be no order as to costs.
13. To obviate further squabbles over this estate, I direct the administrators, whether corporately or individually, to apply for the confirmation of the grant to pave way for the distribution of the estate. The application for confirmation shall be filed within 30 days of the date of this ruling. The matter shall be mentioned for compliance on a date to be given at the date of delivery of this ruling.

DATED, SIGNED and DELIVERED at NAIROBI this 23rd DAY OF January 2015.

W. MUSYOKA

JUDGE