

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

SUCCESSION CAUSE NO. 402 OF 2003

IN THE MATTE OF THE ESTATE OF: ELIAS GERO OKADO.....DECEASED

AND

IN THE MATTER OF AN APPLICATION BY: JULIANA ATIENO GERO &

3 OTHERS.....APPLICANTS

VERSUS

AGNES WAIRIMU GERO.....RESPONDENT

RULING

The application dated 28-10-2014 by the applicants prays for the following orders:

- 1) That the court be pleased to issued an order restraining the respondent from evicting and or threatening to evict the tenant in occupation of residential house erected on land parcel No. LR 37/260 Nairobi West.**
- 2) Costs tot he applicant.**

The same is supported by the affidavit of Donald Onyango and Selina Gero sworn on the event date. The substance of the application which apparently was served but not opposed is that the respondent who is a co-administrator to the property has issued notice to evict the tenant.

The parties herein are joint administrators of the estate of the late Elias Gero Okado and according to the grant issued on 16-9-2003 and confirmed on 25-10-2004 each of them own a third of the suit property.

Having carefully perused the application this court shall proceed to dismiss the same for the following reasons. First of all I do not think that this is the proper forum to litigate the running of the said property. The grant having been confirmed, and none of them is challenging it, either by way of annulment or revocation, the proper place is the other normal courts and not the probate division. I say so because all the parties, namely the applicants and the respondents are equal co-owners. Whichever way the want to deal with the property is no longer a subject of succession.

Secondly, the application has been brought under wrong provisions of the law. The Civil Procedure does not apply in the succession proceedings save in very limited circumstances. Order 51 of the Civil Procedure Rules as well as section 1, 3A and 3 (b) do not apply.

Finally, I do not know how this court can micromanage the distributed property at this juncture. In any event the applicants have not disclosed to the court what has been going on since 25th October, 2004 when the grant was confirmed.

Consequently, parties herein should take their disputes elsewhere. To the extent that non is challenging the grant I hold that this is not the proper forum. The application is dismissed with no orders as to costs.

Dated, signed and delivered at Kisumu this 12th day of March, 2015.

H.K. CHEMITEI

JUDGE