



REPUBLIC OF KENYA

High Court of Kisii

Succession Cause 215 of 2011

MARY KEMUNTO MUSA 1ST PETITIONER/1ST RESPONDENT

FELIX MUSA 2ND PETITIONER/2ND RESPONDENT

VERSUS

IRENE KEMUNTO MUSA OBJECTOR

AND

KENNEDY BOSIRE GICHANA INTERESTED PARTY/APPLICANT

RULING

1. The Interested Party herein, Kennedy Bosire Gichana has moved this court by Summons dated 14th September 2012 and filed in court on 17th September 2012 for an order of injunction restraining the Petitioners, their agents, servants, workmen or any other person or persons claiming through them from entering, disposing of, alienating, constructing or in any other manner whatsoever interfering with land parcel NO. KISII MUNICIPALITY/BLOCK I/126 (**the suit land**). The applicant also prays that costs of and incidental to the application be provided for.

2. The application is premised on the grounds on the face and is also supported by the affidavit sworn by Kennedy Bosire Gichana on 17th September 2012. The deponent contends that he bought a portion of the suit land from the late Peter Omurwa for Kshs.1,500,000/= and that the deceased owed him a sum of Kshs.360,000/= for the intended sale of plot No. KISII MUNICIPALITY/BLOCK I/135 which sum the deponent says can be treated as a set off from the balance of the purchase price for the suit property. According to paragraphs 2, 3 and 4 of the supporting affidavit, the sum of Kshs.360,000/= was made up of Kshs.200,000/= paid by the deponent to facilitate the process of obtaining grant of letters of administration and Kshs.110,000/= for extension of the lease instrument. The deponent avers that the affidavit in support of the petition, that is to say Form P&A5 does not indicate that he has an interest in the suit property, hence this application.

3. The application though served is not opposed. When the application came up for hearing Mr. Momanyi Aunga for the objector submitted that they supported the application because the objector also seeks to annul the grant that was issued to the petitioners in her capacity as widow of the deceased. Mr. Momanyi submitted that the acts by the petitioner of carrying on with construction on the suit property when the application for revocation is pending amounts to intermeddling with the deceased's estate and should not be condoned by this court. Counsel urged the court to allow the petition since the shares for the individual beneficiaries have not been identified. Counsel urged court to preserve the deceased's estate awaiting the hearing of the summons for revocation.

4. The sections of the law cited by the applicant herein give power to the court to ensure that there is no intermeddling with a deceased's estate. Under **section 47** of the **Law of Succession Act, Cap 160 Laws of Kenya**, this court has jurisdiction to entertain any application and determine any dispute under the Act and to pronounce such decrees and make such orders therein as may meet the ends of justice. **Rule 73** of the **Probate and Administration Rules** saves the inherent powers of court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of court.

5. In the instant case, there is a pending application seeking revocation of grant issued to the Petitioner herein. That application has been duly served upon the Petitioner and is awaiting hearing and final determination. In the meantime, there are allegations that the petitioner is carrying out construction on the suit land first before individual shares of beneficiaries have been identified and secondly despite the pendency of the summons for revocation. The petitioners though served have chosen not to respond to the allegations that they are constructing on the suit land despite protestations from the beneficiaries.

6. In the circumstances, I am persuaded that the petitioners are intermeddling in the deceased's estate, and their actions must be halted until the respective beneficiaries' interests are clearly identified. For this reason, the application dated 14th September 2012 be and is hereby allowed in terms of prayer 2 thereof. Costs of this application to the applicant and the objectors.

7. It is so ordered.

Dated and delivered at Kisii this 21st day of March, 2013

RUTH NEKOYE SITATI
JUDGE.

In the presence of:

Mr. Minda (present) for Interested Party/Applicant

Mr. Momanyi Aunga (absent) for Objector

M/s Mbicha (absent) for Petitioners

Mr. Bibu - Court Clerk

RUTH NEKOYE SITATI
JUDGE.

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