



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
SUCCESSION CAUSE NO.176 OF 2009

IN THE MATTER OF THE ESTATE OF PETER MAUDA (DECEASED)

ROSALIA AKUMU MAUDA

ALLOYS MAUDA PETER JULIAN.....PETITIONERS

VERSUS

LESTER W.W.E. OWINO

FREDRICK MAUDA

PETRONILA A. MAUDA

CHARLES EKESA MAUDA

TOBIAS MAUDA OCHIENG

DEMTILA MAUDAOBJECTORS

R U L I N G

There is a dispute between the Petitioners and the Objectors regarding who is entitled to inherit a parcel of land registered as LR. No.Bukhayo/Mudika/2626 (the suit premises). The case is yet to be heard and determined. The parties have complied with the preliminaries, including filing witnesses' affidavits. On 1st February, 2012 the one of the Petitioners, Alloys Mauda Peter Julian filed an application pursuant to **Rules 49** and **73** of the **Probate & Administration Rules**, and **Section 82** of the **Law of Succession Act** seeking an order from this court to compel the tenants residing on the suit premises to deposit the rent into court or an account to be agreed by the parties pending the hearing and determination of the succession cause. He further prayed that Rosalia Akumu Mauda, his co-petitioner, be ordered to file a statement of account or account for the rent that she has received from the suit premises since 7th November 1994. The application is supported the annexed affidavit of the Applicant, Alloys Mauda Peter Julian.

The application is opposed. Rosalia Akumu Mauda filed a replying affidavit in opposition to the application. She deponed that she was the occupant of the suit parcel of land because the same was purchased for her by her father (the deceased). She attributes the complaint by the Applicant to the succession dispute between the two houses that comprise beneficiaries of the estate of the deceased. It was her case that the Applicant was the registered owner of a nearby parcel of land registered as LR.No.Bukhayo/Mundika/2627 and therefore was not entitled to claim the suit parcel of land. She deponed that the application was an attempt by her brothers to deny her ownership of the suit premises

before the hearing and determination of the succession dispute.

At the hearing of the application, this court heard rival submission made by Fwaya for the Applicant and by Mr. Wanyama for the Respondent. This court has carefully considered the said submission. It has also read the pleadings filed by the parties herein in support of their respective opposing positions. As stated earlier in this ruling, there exists a dispute between the Petitioners and the Objectors regarding who is entitled to inherit, among other properties, the suit premises. That dispute is yet to be heard and determined. Pending the hearing and determination of the same, the Applicant is seeking an interim relief to preserve the income that is being received from the suit premises on behalf of the estate of the deceased. The issue for determination by this court is whether the Applicant established that indeed the suit property belongs to the estate of the deceased, and secondly, whether the residential premises on the suit parcel of land were developed by the deceased.

Having carefully evaluated the facts of this application, it was clear to this court that the deceased had more or less settled his children in their respective portions of land prior to his death. Rosalia Akumu Mauda alleges that the deceased settled her on the suit premises prior to his death. This is the reason why she is in occupation of the same. The fact that Rosalia Akumu Mauda is in occupation of the suit premises militates against this court issuing the order sought by the Applicant. The Applicant did not establish to the satisfaction of the court that indeed the deceased developed the rental premises of the suit property. The claim by Rosalia Akumu Mauda that she has all along been a beneficiary of the rental income from the suit premises is credible taking into account her claim that the suit property was purchased by the deceased for her benefit. At this stage, this court cannot delve into the merits or otherwise of the succession dispute. Suffice for this court to state that the Applicant has not given any reason for this court upset the status quo. Rosalia Akumu Mauda has been receiving rental income from the suit premises for more than twenty (20) years. That status quo should remain until the determination by the court as to who shall be entitled to the suit premises.

This court therefore finds no merit with the Applicant's application seeking to have the rental income deposited in court or in a joint interest earning account. The status quo that prevails as of now shall continue until the hearing and determination of the succession dispute. If the court shall reach a finding against Rosalia Akumu Mauda, then the rental income that she has received shall be taken into account in the distribution. There shall be no orders as to costs.

L. KIMARU

JUDGE

DATED, COUNTERSIGNED AND DELIVERED AT BUSIA THIS 24TH DAY OF JULY 2013.

F. TUIYOT

JUDGE