



REPUBLIC OF KENYA

IN THE HIGH COURT

AT MACHAKOS

Succession Cause 827 of 2011

IN THE MATTER OF THE ESTATE OF GEOFFREY MEITAMEI LONINA - DECEASED

SALOME WANJIRU MEITAMEI APPLICANT

VERSUS

EVALYENE SIAN MEITAMEI RESPONDENT

RULING

The proceedings herein were commenced by way of Chamber Summons dated 3rd October 2011. The chamber summons was filed under section 45 (1) & (2) of the Law of Succession Act (Cap 160) and Rule 49 and 73 of the Probate and Succession Rules. It was filed under certificate of urgency. The prayers are as follows:-

1. (Spent).
2. THAT the Respondent, her servants, employees, agents and/or through whoever be restrained from interfering with the applicant's quiet enjoyment, cultivation, utilizing, residing thereon and/or in any other way possible usage of LR Title No. Oloitokitok/Olkaria/996, motor vehicles Reg. No. KAM 104 F and KAZ 856 Q all registered in the name of the deceased Geoffrey Meitamei Lonina until the hearing and determination of this application or further orders of the court regarding the estate of the deceased.
3. THAT the costs of this application be provided for.

The application has grounds on the face of the Chamber Summons. It was also filed with a supporting affidavit sworn by the applicant on 3rd October 2011. The applicant also filed a further affidavit and submissions.

The application is opposed. The respondent filed a replying affidavit sworn by herself on 11th October 2011. Though counsel for the respondent Mrs Muchoki stated that they filed submissions, I do not see the same in the file.

On the hearing date, Ms Mwatsama for the applicant and Mrs Muchoki for the respondent relied on documents filed.

Indeed, under section 45 (1) & (2) of the Law of Succession Act (Cap 160), this court has powers to

protect the assets of a deceased person. However, in my view, only an administrator or an interested party is an existing administration cause, can apply for protection of the deceased's assets. In the present matter, no application for letters of administration has been filed under sections 51, 53 or 54 of the Law of Succession Act. Therefore, in my view, the provisions of section 45 of the Act cannot be brought into play by the applicant. She has no legal standing in law to bring the present applicant. On that account, I find that the application is misconceived.

Even if the application was filed under the Civil Procedure Act, (Cap 21), it would still not succeed. This is so because, the application is filed without any existing cause or proceedings. It stands on its own as a Chamber Summon, and asks for interlocutory orders. An interlocutory application cannot stand on its own. Nor can substantive orders be given in such an application.

In my view, the application is misconceived and without any legal basis, as there is neither an administrator or personal representative appointed, nor was it filed on an existing succession cause or other existing case. The orders sought cannot be granted in a Chamber Summons which stands on its own, without any existing underlying cause or proceedings.

In the result, therefore, I find that the application is misconceived and incompetent. I strike it out, with costs to the respondent.

Dated and delivered at Machakos this **18th** day of **June** 2012.

George Dulu
Judge

In presence of:-

Mr Makunja holding brief for Wambugu Kariuki for applicant
Mrs Muchoki for Respondent
Court clerk: Nyalo.