



REPUBLIC OF KENYA

High Court at Kakamega

Succession Cause 505 of 2012

IN THE MATTER OF THE ESTATE OF JOHN MMBWANGA (DECEASED)

BETWEEN

TABITHA VODEMBEKE 1ST APPLICANT

ELIZABETH JORONO YATOR 2ND APPLICANT

JULIA MUTHONI THEURI 3RD APPLICANT

AND

EMMY AGISU RESPONDENT

RULING

The Notice of Motion application dated 28.6.12 seeks orders that:-

“1. Spent.

2. Pending the hearing and determination of this application there be an order of temporary injunction restraining the respondent, her servants, employees, agents or anyone purporting to act on her behalf from disposing off and or selling motor vehicle reg. No. KAQ 859r Mitsubishi van.

3. The motor vehicle Reg. No. KAQ 859R Mitsubishi Van registered in the names of JOHN MMBWANGA, be taken for safe custody at the Serem Police Station and the Officer Commanding Station to ensure compliance.

4. The orders prayed for in paragraph 2 and 3 herein (if granted) be confirmed until the hearing and determination of this Succession cause.

5. Costs of this application be provided for.”

The application is supported by the affidavit of the 1st applicant, **TABITHA VODEMBEKE** sworn on 28.6.12.

According to the said affidavit, the respondent obtained a grant from Vihiga SRM’s court without the consent of the applicants who also claim to be wives of the deceased. It is averred that the respondent

used the said grant to withdraw some undisclosed amount of money from the account of the deceased at K.C.B. Serem Branch A/C No.110650583 and that the respondent is in the process of disposing motor vehicle reg. No. KAQ 859R Mitsubishi Van which is registered in the name of the deceased.

In opposition to the application, the respondent filed a replying affidavit sworn on 21.8.12. The respondent has contended that the motor vehicle in question is her property and that it is not subject to distribution. According to the respondent, she takes care of three minor children who were left behind by the deceased. That she has no intention of disposing of the said motor vehicle as she uses the same to generate income for the maintenance of the said children.

The respondent also relied on her replying affidavit sworn on 21.8.12 in support of the Chamber Summons application herein. In the said affidavit, it is averred that the 1st applicant ceased to be a wife to the deceased 14 years ago and that the applicants never contributed towards the acquisition of the property that they claim. It is also averred that the money from the K.C.B. account was applied to meet the deceased's medical bills, pay funeral expenses and to offset liabilities.

Nyanga & Company advocates appeared for the applicants while the firm of Nandwa & Co. Advocates appeared for the respondent. The application proceeded by way of written submissions.

I have considered the application, the reply to the same and the written submissions.

No further affidavit was filed by the applicants in response to the issues raised in the replying affidavit relating to the alleged divorce, the maintenance of the minor children and the ownership of the motor vehicle. The affidavit evidence by the respondent in respect of the said issues therefore remains uncontroverted. It would therefore not be reasonable in the circumstances to place the vehicle in the custody of the Police Station.

This court however finds it imperative to preserve whatever is remaining of the estate of the deceased pending the hearing and determination of the summons for revocation. Consequently, prayers No. 2 & 4 which are for issuance of injunctive orders are allowed. Orders in prayer No. 2 to remain in force until further orders of this court. No. 3 for detaining of motor vehicle at the police station is not allowed.

Costs in the cause.

Dated, delivered and signed at Kakamega this 29th day of November, 2012

B. THURANIRA JADEN
J U D G E