

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Succession Cause 2836 of 2004

IN THE MATTER OF ZAINAB NDUTA MOHAMED (DECEASED)

ROSEMARY WAIRIMU MUNI. 1ST APPLICANT

ISSA MOHAMED. 2ND APPLICANT

VERSUS

MOHAMED SALEH SHEIKH MOHAMED RESPONDENT

R U L I N G

The application before me is dated 30th September, 2008. It seeks that the Respondent, his agents, servants or any other person claiming through him be restrained by way of a temporary injunction from evicting or otherwise dispossessing the 1st applicant/plaintiff of the rooms she is occupying in plot Number 36/1/154 Eastliegh pending the hearing and determination of this application

The record shows that the plot was originally listed as parcel of the deceased, Zainab Nduta Mohamed's estate by the Petitioner/Respondent. The confirmed Grant of Letters of Administration dated 8th of May, 2006 and the rectified version thereof dated 25th October, 2007 show the said property to be part and parcel of the estate. Whether inclusion of the said property in the estate is yet to be proved or not proved to be part of the estate in this suit in High Court Suit No. 478 of 2008 dated 30th September, 2008 and filed on 3rd October, 2008 or a defence yet to be filed by the respondent/Defendant therein.

Before this court however, the judicial authority of the rectified certificate of confirmation of grant dated 25th October, 2007 still stands until lawfully cancelled or set aside. It follows accordingly that any person acting against the said express orders of this court is acting contrary to the order of court. Nor in my opinion would any land registrar, contrary to the express orders of court as stated in the rectified grant feel justified to alter a legal position expressed in the grant without referring the matter to the court that made the order.

However, let the above be what it may. The issue before the court presently is whether in the circumstances stated above, the applicants are entitled to the injunctions sought until the main issues of ownership or to her related interests are determined. In other words, should this court preserve the state of the property in dispute until the issue of ownership is decided?

The answer to the question is Yes. The reasons are that the rectified grant of letters of administration still shows that L. R. No. 36/1/54 is part and parcel of the estate of the deceased whose agreed distribution to the beneficiaries who include the applicants has not been altered. Secondly, whether or not the ownership of the said property will be decided in favour of the applicants or respondent is an issue not yet determined. Thirdly there is a pending suit, HCC Case Number 478 of 2008 in which the issue of ownership vis a vis the position shown in the grant of letters will be decided. It will only be proper for the status quo as shown in the Grant of Letters to be preserved.

The court observes that in the parties written submission placed before, they attempted to prove ownership of the property above mentioned. In my view the issue of joint ownership and the

consequences arising therefrom when a joint owner dies, is seriously not one I should pay great attention to at the present moment. My concern should be and is that the disputed property should not be disposed of by the respondent before the courts decide the ownership.

I have accordingly reached the conclusion that the applicants have proved the merits for ordering the injunction sought. I hereby grant the temporary injunction as prayed in prayer 4 of the application dated 30th September, 2009. Orders accordingly with costs in the cause.

Dated and delivered at Nairobi this 1st day of April, 2009.

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D A ONYANCHA

JUDGE