



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

Succession Cause 109 of 2004

IN THE MATTER OF THE ESTATE OF THE LATE THIRAI KABIRA (DECEASED)

NAMONYA KIRIERI PETITIONER

VERSUS

PETER MALAI NYUMOO OBJECTOR

RULING

This is an intriguing dispute. It appears to involve two deceased persons who seem to have shared the same name and owned the same parcel of land.

On 26th May 2004 the petitioner herein filed this cause for grant of representation in respect of her deceased husband, Thirai Kabira who is said to have died in 1968 leaving behind the petitioner, two children, Kagendo Kiriera and Francis Muriuki, according to the chief's letter. But according to the petitioner's affidavit in support of the petition, there was also another dependant by the name Margaret Kanini Mati.

The deceased is said to have left only one property, L.R. No. NJIA/BURIERURI/1131 measuring 0.21 Ha. A temporary grant was issued to the petitioner on 20th July 2004, although it would appear that the objector had raised an objection on 31st May 2004.

In the objection, the objector states that he is the grandson of the deceased who he insists was alive at the time the petition was filed. That the deceased was not the husband of the petitioner but infact a woman – grandmother of the objector. Subsequently, on 15th July 2005 the petitioner filed the instant motion dated the same day under certificate of urgency seeking four (4) main orders, namely,

- (i) inhibition on the suit land
- (ii) cancellation of the present registered owner, the objector and rectification of the register by restoring the name of the deceased
- (iii) injunction to restrain the objector from interfering with the peaceful, quiet enjoyment and utilization of the suit land including the miraa on the same.
- (iv) The arrest of the objector for intermeddling with the estate of the deceased.

In reply to these averments, the objector has deposed that the application is defective and amounts to an abuse of the court process as it is brought under the wrong provision of the law and also seeks orders which cannot be granted in a succession cause.

The petitioner and the objector present two diametrically opposed positions. The petitioner has accused the objector of transferring the suit property to himself after the death of the deceased and without letters of administration. The objector on the other hand maintains that the petitioner has no claim to the estate of the deceased.

While the deceased in respect of the petitioner's claim died in 1968 the objector is categorical that the deceased died in 2004. That the deceased was a female contrary to the petitioner's assertion to the contrary. The only common denominator is the suit land. The objector claims that the deceased executed a power of attorney in his favour on 5th May 2004 in respect of the suit land.

Shortly thereafter, the deceased at a consideration of Kshs. 30,000/= transferred the suit land on 7th July 2004 to the objector and title issued. On 11th July 2005 this court (Onyancha, J) issued an order of inhibition pursuant to the prayer in the instant application and a mandatory order of injunction allowing the **".....petitioner and her sons (or son and daughter) to resume occupation of the land and house the subject of this case until further orders."**

The objector vide his application dated 22nd July 2005 has sought for stay of execution and review of those orders. The objector states in that application that he lives on the suit property while the petitioner is married and lives elsewhere. That the petitioner is using the above order to evict the objector.

The application before me is brought under the inherent powers of this court – Rule 73 of the Probate and Administration Rules and section 45 of the Law of Succession Act which prohibits intermeddling with the property of the deceased.

The position as it is on the ground, in so far as what is obvious from the record is concerned, is that the petitioner and her family have a court order allowing them to remain on the suit property. The objector on the other hand has averred that he not only has the title to that parcel of land, but also is in occupation.

The relationship of the parties *vis a' vis* the deceased is not clear. Who the deceased is i.e. whether it is one and the same person or two different people, is similarly not clear. The order that appears to me to be favourable in the circumstances of this matter is that the parties to maintain the *status quo* as of the date of this order pending the hearing of the objection. For the avoidance of doubt, no party has a right to evict another and the farming activity on the suit land to continue as previously, confined to the respective definite portions of the suit land.

The order of inhibition granted on 11th July 2005 is confirmed pending the hearing of the objection. I make no orders as to costs.

Dated and delivered at Meru this 19th day of June 2009.

W. OUKO

JUDGE