

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA

Succession Cause 263 of 1995

IN THE MATTER OF THE ESTATE OF MATAYO KAVEYI - DECEASED

BETWEEN

KALORI WASHIKU MUMBATSI.....PETITIONER/DECEASED

A N D

JANEROSE ANYANGO WASHIKU.....APPLICANT

A N D

NICHOLAS K. OKELLO.....PETITIONER/RESPONDENT

RULING

I have perused the application by **Janerose Onyango Washiku**, the applicant, seeking injunction. I have also perused the replying affidavit of the Respondent, Nicholas K. Okello.

The application was made during the pendency of the Applicant's earlier application dated 29.7.2004 seeking revocation of the Grant now held by the Respondent whose name has been registered *qua* administrator in the title to the suit land **No. N.Wanga/Mayoni/209**. The estate herein is of the late Matayo Keveyi, who was survived by two sons one of whom was Kalori Washiku Mumbatsi, the husband of the Applicant, who has since died and the other is Nicholas K. Okello. Karoli Washiku Mumbatsi held the Grant of Letters of Administration but when he died, his brother Nicholas K. Okello is alleged to have moved swiftly and applied for substitution as a result of which he became the new administrator of the estate of his deceased father. The Applicant, who is the sister-in-law of the Petitioner and who is entitled to the share of her husband in the estate of her father-in-law is apprehensive that she might be disinherited. It is for this reason that she has sought injunctive orders.

Mr. Akwala, learned counsel for the Applicant, urged me to grant the order sought in terms of prayer (ii) of the application as the averments in support of the application were not contested as his client was apprehensive she might be disinherited. Mr. Onido, learned counsel for the Petitioner/Respondent, submitted that his client has no wish to disinherit the Applicant.

This is a succession cause and the administration of the estate of the deceased who died on 25.12.1970 is governed by the Provisions of the Law of Succession Act Cap. 160. The land comprising the estate of the deceased is still held by the Petitioner *qua* administrator of the estate. I decline to grant the injunction sought. But so that ends of justice are not defeated and pursuant to the inherent power of this court, I order that an inhibition order do issue to be registered forthwith by the Land Registrar against land title No. North Wanga/Mayoni/209 prohibiting registration of any dealing in the title until succession to the deceased's estate is determined. The parties shall proceed to set down the pending application/s for hearing without undue delay. For the avoidance of doubt, the parties shall continue to occupy and use the land as they have done in the past and *status quo* shall therefore be maintained. There will be no order as to costs.

Dated at Kakamega this 25th day of October, 2007.

G. B. M. KARIUKI

J U D G E