

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Succession Cause 1440 of 2000

IN THE MATTER OF THE ESTATE OF SEBASTIAN KARANJA MACHARI (DECEASED)

RULING

The is an application dated 8th June 2006 filed b Mangerere Ngisa & Company advocates on behalf of the applicant Virgina Muthoni Karanja . It is purported to be brought under Rules 49, 58, 59, 61 and 73 of the Probate & Administration Rules. It seeks for five orders, one of which has already been spent, that

- 1) Spent
- 2) The objectors herein be ordered to allow the applicant ingress into and possession of her matrimonial house erected on land parcel No. Githunguri/Gathangari/758 together with free and unrestricted ingress and egress into and out of the said land parcel Githunguri/Gathangari/758 pending the hearing and determination of this cause.
- 3) The objectors be evicted and ordered not to interrupt with the applicant's peaceful possession and occupation of the matrimonial home erected on land parcel No. Githunguri/Gathangari/758 pending the hearing and determination of this cause
- 4) That the Officer Commanding Githunguri Police Station do enforce the orders made herein to eforce compliance therewith
- 5) The costs of this application be provided for.

The application has grounds on its face and is supported by the affidavit of the applicant sworn on 8/6/2006. The application is opposed and a replying affidavit sworn by Francis Macharia Karanja on 19/6/2006 was filed.

The application was heard before me on 19/6/2006 . Mr. Ngisa for the applicant and Mrs. Wambugu for the respondents addressed me.

I have considered the application, the affidavits filed and the submissions of both counsel for the parties. The grounds of the application are that the respondents have taken possession of the house in which the applicant was residing as wife of the deceased. They have prevented her from getting into the house. The succession case has not been finalized.

According to the affidavit in support of the application, at paragraph 6, one Charles Kamau Karanja on 29th May 2006 went to that house and threatened to kill the applicant. The replying affidavit filed sworn by one Francis Macharia Karanja, who denied the threats alleged by the applicant against Charles Kamau Karanja. Charles Kamau Karanja did not file a replying affidavit. According to the submissions of Mr. Wambugu for the respondents, the respondents have not prevented the applicant from access to the subject house.

I cannot place much weight on the replying affidavit. The denial on behalf of Charles Karanja is evidence of hearsay nature. Mrs. Wambugu also, in submission, denies that the respondents prevented

the applicant from access to the house. There is no contention that the applicant was not occupying the house when deceased died, or that she is not entitled to occupy the house, before finalization of the succession cause.

If the respondents did what is alleged by the applicant, it would amount to intermeddling with the property of the deceased in terms of section 45 of the Law of Succession Act. They are denying that they did what is alleged by the applicant, that they threatened and prevented her from occupying the house. In that event, they are actually not opposing the orders sought by the applicant. Therefore, I will grant prayers (2), (3) and (4) of the application.

For the above reasons, I allow the application and grant prayers (2), (3) and (4) of the application. Costs will be in the cause.

It is so ordered.

Dated and delivered at Nairobi this 10th day of July 2006.

George Dulu

Ag. Judge