



REPUBLIC OF KENYA



In re Estate of Hem Singh Bhamra (Deceased) (Succession Cause 35 of 2021) [2024] KEHC 135 (KLR) (19 January 2024) (Ruling)

Neutral citation: [2024] KEHC 135 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 35 OF 2021**

JRA WANANDA, J

JANUARY 19, 2024

IN THE MATTER OF THE ESTATE OF HEM SINGH BHAMRA (DECEASED)

BETWEEN

JASBIRKAUR SABHARWAL OBJECTOR

AND

RAVINDER KAUR BHAMAR PETITIONER

RULING

1. The deceased, Hem Sigh Bhamra died on 13/02/2021. On 15/04/2021, the Petitioner applied for Grant of Probate of Written Will in her capacity as the Executrix of the Will made by the deceased. The Will exhibited is dated 17/02/2015 and is a joint one made by both the deceased and his wife, one Perminder Kaur Bhamra who herself died earlier on 21/04/2019. In the Petition, it was stated that the deceased was survived by 3 daughters (including the Objector and the Petitioner) and left behind funds in two respective Bank Accounts. However, in the Will, there is also reference to the property known as LR No. Eldoret Municipality Block 14/270 which was bequeathed to the Petitioner
2. The Grant of Probate was then given by the Court on 30/06/2021. Summons for Confirmation of the Grant was subsequently filed on 18/10/2021 and upon which leave was sought that the same be heard before expiry of the statutory 6-months timeline. However, before the same could be heard, the Protester challenged the Will, including the proceedings leading to issuance of the Grant of Probate.
3. A related Cause, namely, Eldoret High Court Succession Cause No. 36 of 2021 relating to the estate of the deceased's wife, the said Perminder Kaur Bhamra was subsequently filed by the same Petitioner, through the same law firm and on the same date as herein. Since the two estates concerned the same properties and which were by the same joint Will bequeathed simultaneously and concurrently, by the orders made in the said Eldoret High Court Succession Cause No. 36 of 2021 on 19/09/2021 by Ogola J, that other Cause was stayed pending determination of this instant Cause.



4. The Application now before the Court is the Protester's Chamber Summons dated 17/01/2023 seeking, the following orders, pending hearing and determination of the Protest:
 - i. [.....] Spent
 - ii. [.....] Spent
 - iii. That the Honourable Court grant orders of injunction directed at the Administratrix, her agents, representatives or persons acting under her direction from denying the Protestor-Applicant access to the estate property Eldoret Municipality Block 14/720 where she has been living together with her children and family pending the hearing and determination of this confirmation hearing
 - iv. That this Honourable Court grant orders directed at the Administratrix intermeddling with the estate or her agents, representatives or persons directing her to restore water and electricity supply to Eldoret Municipality Block 14/720 occupied by the protestor/Applicant.
 - v. That costs of the application be provided.
5. The Application is filed through Messrs Otieno Yogo, Ojuro & Co. Advocates and is stated to be brought under Section 45 and 47 of the *Law of Succession Act*. It is premised on the grounds stated on the face thereof and is supported by the Affidavit sworn by the Protester, Mrs Jasbirkaur Sabharawal.
6. In the Affidavit, the Protester has deponed that she is the daughter and beneficiary of the deceased and was living with the deceased in the deceased's house described as Eldoret Municipality Block 14/720 (hereinafter referred to as "the suit property") where she was allocated a section of the house where she has been staying with her family, that the Petitioner obtained Letters of Administration over the estate of their father, that even before the Grant is confirmed and assets distributed, the Petitioner has purported to rent out the premises and has been collecting rent and utilizing the same for her own benefit, it is trite law that unless and until the assets are distributed none of its beneficiaries is allowed to appropriate any part of the estates without orders of the Court, that the Petitioner has also disconnected the water and electricity to the premises where the Protester has been living causing the Protester extreme hardship, that the Petitioner has deployed guards to the premises and who have continuously harassed the Protester and her family members by preventing them from leaving or entering the premises, at times they have been locked out forcing them to seek refuge from neighbours, unless the Petitioner is ordered to reconnect electricity and water to the premises, the Protester will continue to suffer, that the actions of the Petitioner amounts to intermeddling with the estate and which is a criminal offence for which this Court ought to order sanctions against the Petitioner.
7. The Protester deponed further that the Petitioner has on several occasions had the Protester's son arrested for no reason whenever she finds him in the compound yet the Petitioner knows that the Protester and her family do not have any other place to stay as they are landless, the arrests of the Protester's son are in a bid to force the Protester to leave the premises, that it is in the interest of justice that the Petitioner be ordered to reconnect the water and electricity since her health and security are jeopardizes, and that the actions of the Petitioner requires the Court to appoint an independent Administrator since the Petitioner is unable to act impartially.

Petitioner's Replying Affidavit

8. In opposing the Application, the Petitioner swore the Replying Affidavit filed on 10/02/2023 through Messrs Taibjee & Bhalla Advocates. She deponed that the Protester does not reside in the property but time and again visits, that just like the rest of them, she is required to make entries in the visitors book for



record purposes since the estate is still the subject of Court, it is imperative that everyone entering and exiting be required to have their names recorded, that she is therefore bewildered by the allegations that she has denied the Protester access to the premises, that by filing the present Application the Protester intends to bypass the issues raised in her Objection and enter into the premises, cause mayhem and interfere with the estate to the extent that by the time the Objection is dismissed, the estate will have suffered substantial wastage.

9. The Protester deponed further that the orders sought should only be granted upon hearing of the objection to avoid the worst that can happen in the event of interim orders without limit, that she remains apprehensive that once the orders are granted substantial fighting will ensue on numerous grounds since the Petitioner intends to interfere with the Petitioner's privacy and life. She contended further that the Protester has never been allocated the suit property and has never stayed there with her family, that the Protester has not provided any evidence to substantiate her allegations, that the allegations that the Petitioner has distributed the estates' assets are without any basis, that much as the Protester has not furnished any alleged tenancy agreement, the Petitioner is a stranger to the same even if the same has been availed to the Court, the source of the agreement is best known to the Protester, she is apprehensive that the Agreement is a creature of the Protester, that any actions undertaken by the Petitioner are with the intention of preserving and protecting the estate, and that the allegations that the Petitioner had disconnected water and electricity are false and unsubstantiated. She reiterated that the Protester or her family does not reside in the property and that when they visit, just like all visitors, the security firm deployed for purposes of securing the premises, requires them to sign and when leaving, to counter-sign for evidential purposes, that the allegations that the Petitioner has had the Protester's son arrested for no reasons are false, the reasons for arrest are always communicated and the matters are live before the authorities. In conclusion, the Petitioner deponed that she is apprehensive that if the orders sought are granted, her life would be placed under great danger because of the hostilities and threats that the Applicant and her son pose.

Hearing of the Application

10. The Application was canvassed by way of written Submissions. Pursuant to directions given, the Protester's Counsel filed the Submissions dated 6/06/2023. I could not however ascertain the date when the same was filed since the copy in the Court file does not bear a Court stamp. For the Petitioner, her Submissions were filed on 17/07/2023.

Protester's Submissions

11. In his Submissions, Counsel for the Protester submitted that the validity of the Will together with the Grant of probate which gives the Respondent's powers of an executrix is being contested, that Section 79 of the *Law of Succession Act* should be read together with Section 80(1) and submitted that the Section means that a Grant of probate validates all acts of the executors done prior to the issuance of the grant of probate, that however, as the validity of the Will presented is being challenged, this means that the very foundation of the authority the Petitioner believed they had to act in respect of this estate has been challenged. He cited the case of *In re Estate of Fanice Mary Khanali Aura (Deceased)* (2019) eKLR and also the case of *In re Estate of Lawrence Nginyo Kariuki (Deceased)* (2021) eKLR.
12. Counsel submitted further that while placing the advertisement for the Grant of probate in the Kenya Gazette, the Petitioner published it as an application for Letters of Administration intestate which means that there was no gazette notice of the Grant, that as such the Petitioner's act of leasing out the suit property is illegal because she had no authority over the deceased's estate, that the Court should compel the Petitioner to produce the books of accounts of the proceeds from the suit property



- which she rented out and to issue an order prohibiting her from carrying on with the execution over the deceased's estate.
13. Counsel then cited Section 4 of the *Law of Succession Act* and submitted that taking possession of, disposing of, or otherwise intermeddling in any free property of a deceased person in ways that are not authorized by the Act, or any other written law or by a grant of representation is a criminal offence punishable under Section 45(2) of the *Act*. He cited the case of *Benson Mutuma Muriungi v C.E.O. Kenya Police SACCO & Another* (2016) eKLR on the definition of “intermeddling”. He contended further that Section 79 of the Act provides that property of the deceased vests on personal representatives and as such a grant of representation vests all the property of the deceased in the executrix or the administrator appointed in intestacy, and that the provision suggests that the property in this case is yet to vest in the Petitioner since the Protester has filed a challenge against the issuance of Grant of probate. He reiterated that since there was no proper gazettelement of the Grant, the same is invalid and was not therefore properly advertised before confirmation.
 14. On whether there is a serious issue to be tried and whether the Court can issue orders for temporary injunction, Counsel submitted that the conditions for granting the same were settled in the case of *Giella vs Cassman Brown & Company Limited* (1973) EA 358. He submitted that failure to grant the injunction will greatly prejudice the Protester and her children, that this will be an infringement of their constitutional right to adequate housing as enshrined in Article 43(1)(b) of the *Constitution*, and that cutting out their water supply will also be an infringement of their constitutional right to safe water under Article 43(1)(d).
 15. On whether the Protester will suffer irreparable harm, Counsel submitted that the Protester and her children have been residing in the suit property with the deceased long before his demise, the Protester has known the same as her home, she has nowhere to go as she has no property of her own, and that the Petitioner has taken it upon herself to frustrate the Protester in a bid to force her out of the property.
 16. On which party will suffer greater harm if remedy is not granted, Counsel submitted that failure to grant the injunction will cause the Protester great harm as she will be rendered homeless by virtue of the fact that she and her children have nowhere else to live being that the suit property is the only home they have.
 17. In conclusion, Counsel argued that Section 63 of the *Probate and Administration Rules* confers the Court with the power to refer to High Court Practice Rules while determining Succession matters, that Rule 4 of the *High Court Practice Rules* provides that Courts need to enhance access to justice and that granting the injunction will be a great act of justice towards the Protester

Petitioner's submissions

18. Counsel submitted that it is common ground that for an injunction to be issued, the Applicant must satisfy the three requirements set out in the case of *Giella v Cassman Brown (supra)* and reiterated in *Nguruman Limited v Jane Bonde Nielsen and 2 Others* NRB CA Civil Appeal No.77 of 2012 [2014] eKLR. On the first ingredient as to whether the Protester has a prima facie case, Counsel referred to the definition set out in the case of *Mrao Ltd v First American Bank of Kenya Limited and 2 Others* [2003] eKLR and submitted that the Protester alleges that she has been allocated a portion of the suit property and has been living therein with her family which allegation is false and highly unsubstantiated as the Protester/ does not live within the property. He cited the case of *Njenga versus Njenga* [1991] KLR 401 and urged that all the allegations made in the Application are not backed by any evidence. He referred to the Protester's allegations that the Petitioner has been collecting rent for the suit property and using it for her own benefit and that she has allegedly been harassed while leaving and entering the property



- and that her son has been arrested on several occasions and submitted that the allegations are mere facts made to mislead the Court. He submitted further that as a general proposition, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue, that this is the purport of Section 107(1) of the *Evidence Act*, Section 108, 109 and 112 thereof. He cited the case of *Anne Wambui Ndiritu -vs-Joseph Kiprono Ropkoi & Another* [2005] 1 EA 334. Counsel argued further that in the absence of any material evidence, the Court cannot be led to believe that there has been an infringement of the rights of the Protester to the suit property. He cited the case of *Wamwere & 5 others v Attorney General* (Petition 26, 34 & 35 of 2019 (Consolidated)) [2023] KESC 3 (KLR) and submitted that in view thereof, the Protester does not have a prima facie case.
19. On whether the Protester shall suffer irreparable harm or injury which cannot be compensated by an award of damages, Counsel cited the case of *Nguruman Limited v Jan Bonde Nielsen & 2 Others* (*supra*) and submitted that although the Protester avers that she has been denied access by the Petitioner, the same cannot be ascertained, the Protester's allegations that the Petitioner has disconnected electricity is false and unfounded considering the Protester does not reside in the premises and cannot claim to have suffered as a result of the electricity/water outage, that the Protester alleges that the Petitioner has been collecting rent from the suit property and using it for her personal use but that the same is a mere allegation intended to mislead the Court, that without prejudice, even if the Petitioner was collecting such rent, the same would be recoverable by the Protester by way of damages. According to Counsel therefore, the Petitioner has not dislodged the burden that she is likely to suffer irreparable harm in the event interlocutory injunction is not granted.
 20. On the issue of "balance of convenience", Counsel cited the case of *Pius Kipchirchir Kogo versus Frank Kimeli Tenai* [2018] eKLR in which a definition of the phrase was given, and submitted that in the event the present application is allowed, the Protester shall have the opportunity to enter and interfere with the premises causing waste, that the Application has been made in bad faith as it seeks to bypass weighty issues that are raised the Affidavit of Protest and which can only be granted upon hearing of the Objection, that the Protester was never allocated the suit property nor lived in the property with her family which is an issue that the Court is yet to make a determination on, that it would be unjust if the Protester is allowed the orders as prayed because it will leave room for the Protester to interfere with the estate pending determination of the main suit. He cited the case of *Amir Suleiman vs Amboseli Resort Limited* [2004] eKLR.
 21. Counsel submitted further that the Protester is undeserving of the orders sought as she has not satisfied the principles set out for one to be granted interlocutory orders. He cited the case of *Esso Kenya Limited vs Mark Makwata Okiya*, Civil Appeal No. 69 of 1991. He added that the orders sought are final orders not capable of being granted by way of an interim application. He cited the case of *East African Portland Cement Company Limited vs Attorney General and Another* 2013 eKLR and contended that the Application invites the Court to make orders on issues that are in controversy in the substantive suit.
 22. On costs, Counsel submitted that the Protester having failed to prove its case on a balance of probabilities, costs should follow the event and the same be shouldered by the Protester. He cited Section 27(1) of the *Civil Procedure Act*.



Analysis & Determination

23. Upon examination of the Pleadings, Affidavits, Submissions and the entire Record, I find the one broad issue that arises for determination in this matter to be as follows:

“Whether the Protester has presented sufficient material to warrant granting of temporary orders of injunction, pending hearing and determination of the Protest in this matter, restraining the Petitioner from denying the Protester access to the suit property and compelling the Petitioner to restore water and electricity to the portion of the suit property occupied by the Protester”

24. What the Applicant is seeking are basically orders of interlocutory injunction. It is now agreed, as was held in the case of *Floris Piezzo & Another –vs- Giancarlo Falasconi* (2014) eKLR, that a Probate Court has powers under Section 47 of the *Law of Succession Act* and also Rule 73 of the *Probate and Administration Rules* to grant temporary injunctions.

25. Section 47 of the *Law of Succession Act* provides as follows:

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.”

26. On its part, Rule 73 of the *Probate and Administration Rules* provides as follows:

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

27. The principles guiding the handling of Applications for temporary injunctions are now well settled and are as was set out in the case of *Giella v Cassman Brown & Co. Ltd* [1973] EA 358 and also in *American Cyanamid Co. v Ethicom Limited* (1975) A AER. Following the said cases, the Court of Appeal in *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR stated as follows:

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;

- (a) establish his case only at a prima facie level,
- (b) demonstrate irreparable injury if a temporary injunction is not granted, and
- (c) allay any doubts as to (b) by showing that the balance of convenience is in his favour.

These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. See *Kenya Commercial Finance Co. Ltd V. Afraba Education Society* [2001] Vol. 1 EA 86. If the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant’s claim may appear at that stage. If prima facie case is not established,



then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit “leap-frogging” by the applicant to injunction directly without crossing the other hurdles in between. It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or both that the question of balance of convenience would arise. The inconvenience to the applicant if interlocutory injunction is refused would be balanced and compared with that of the respondent, if it is granted.”

28. The question that therefore arises is whether the present Application meets the threshold laid for the granting of orders of temporary injunction.

29. The Court of Appeal, in *Mrao Ltd v First American Bank of Kenya and 2 others*, (2003) KLR 125, which it also cited with approval in its subsequent case of *Moses C. Mubia Njoroge & 2 others v Jane W Lesaloi and 5 others*, (2014) eKLR, defined a prima facie case as follows:

“ A Prima facie case in a civil application includes but not confined to a genuine and arguable case. It is a case which on the material presented to the court, a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the later”.

30. Applying the above principles to the facts of this case, I note that it is not in dispute that the Protester and the Petitioner are sisters and both are daughters of the deceased. The Petitioner obtained a Grant of Probate herein on the basis of a testamentary Will which indicates that the deceased bequeathed the entire suit property to the Petitioner. Needless to state, the Protester has challenged the authenticity of the said Will. The Court shall at the opportune time, determine that challenge over the validity of the Will and make appropriate final orders.

31. For now, the Protester seeks interim orders. She alleges she was allocated a section of the suit property by the deceased where she has been living with her family, that even before the Grant is confirmed and assets distributed, the Petitioner has rented out the premises and has been collecting rent and utilizing the same for her own benefit, that unless and until the assets are distributed none of its beneficiaries is allowed to appropriate any part of the estate without orders of the Court, that the Petitioner has also disconnected the water and electricity to the premises within the suit property where the Protester has been living thus causing the Protester extreme hardship, that the Petitioner has deployed guards to the premises and who have continuously harassed the Protester and her family members by preventing them from leaving or entering the premises, and that at times the Protester and her family have been locked out forcing them to seek refuge from neighbours. The Protester deponed further that the Petitioner has on several occasions had the Protester’s son arrested for no reason whenever she finds him in the compound yet the Petitioner knows that the Protester and her family do not have any other place to stay as they are landless. She has claimed further that the arrests of the Protester’s son are in a bid to force the Protester to leave the premises. According to the Protester, unless the Petitioner is ordered to reconnect electricity and water to the premises, the Protester will continue to suffer and that the Petitioner’s actions amount to intermeddling with the estate which is prohibited.

32. In opposing the Application, the Petitioner deponed that the Protester does not reside in the property but time and again visits, that just like the rest of them, she is required to make entries in the visitors’ book for record purposes since the estate is still the subject of Court, that it is imperative that everyone entering and exiting be required to have their names recorded, and that she is therefore bewildered by the allegations that she has denied the Protester access to the premises. She contended further that the Protester has never been allocated the premises and has never stayed there with her family. Regarding the renting out of the premises, the Petitioner deponed that that much as the Protester has not furnished any tenancy agreement, the Petitioner is a stranger to the same even if the same has been



availed, that the source of the agreement is best known to the Protester, she is apprehensive that the Agreement is a creature of the Protester, and that any actions undertaken by the Petitioner are with the intention of preserving and protecting the estate. The Petitioner also denied the allegations that she has disconnected water and electricity. She termed the same as false and claimed that the Protester has not provided any evidence to substantiate her allegations.

33. Up to this point therefore, it is evident that the Petitioner has denied all the three allegations made by the Protester, namely, that the Petitioner has denied the Protester and her family access to the suit property, that the Petitioner has disconnected water and electricity supply to the portion of the suit property occupied by the Protester and that the Petitioner has rented out portions of the premises to third parties.
34. In light of the Petitioner's said denials, the Court's burden is therefore lessened since it does not have to interrogate the allegations. By denying the allegations that she has committed the acts alleged, it also follows that by implication, the Petitioner concedes that until the determination of the Protest filed herein, she does not have the right to deny the Protester access into the suit premises, that she has no right to disconnect water and electricity supply to the portion alleged occupied by the Protester and her family, if at all, and that the Petitioner has no right to rent out any portion of the property without the authority of this Court.
35. I therefore find it curious and strange that despite making the above express denials, the Petitioner and her Counsel nevertheless proceed to make the contradictory claims that by filing the present Application, the Protester intends to bypass the issues raised in her Objection and "enter into the premises, cause mayhem and interfere with the estate". The Petitioner has already deponed on oath that the Protester has been having full access to the suit property without any hindrance. How then is it that it is now the current Application which would be the basis for allowing the Protester access?
36. Having already denied committing the acts alleged, I also find it contradictory that the Petitioner then also submits that the orders sought should only be granted upon hearing of the objection to avoid the "worst that can happen in the event of interim orders without limit", that she remains apprehensive that "once the orders are granted substantial fighting will ensue on numerous grounds" since the Protester intends "to interfere with the Petitioner's privacy and life". The Petitioner alleges further that she is apprehensive that if the orders sought are granted, "her life would be placed under great danger because of the hostilities and threats that the Applicant and her son pose". Besides this position being clearly in contradiction to the express denials already made, I also find that the Petitioner has not presented any evidence to support this perceived "apprehension". In any case, this is a country governed by the rule of law and there are capable authorities tasked with the duty and obligation, once it is brought to their attention, to protect citizens and take appropriate action against any person who threatens the life or well-being of another.
37. I also find it curious the statement made by the Petitioner that the Protester does not reside in the premises and cannot therefore claim to have suffered as a result of the electricity/water outage. Could this be a tacit admission that indeed such outage was caused as alleged?
38. On the allegation that the Petitioner has rented out the suit property, the Petitioner has submitted that she Protester has not furnished any tenancy agreement, that the Petitioner is a stranger to any Tenancy Agreement, and that the source of the agreement is best known to the Protester. It is however evident that in her Supporting Affidavit, the Protester has exhibited a copy of a Tenancy Agreement dated 23/12/2021. On the face of the Agreement, the same was entered into by the Petitioner (Landlady) to rent out the suit property to one Monica Aulel Kelei (Tenant) for a period of 2 years with effect from 23/12/2021, at a monthly rent of Kshs 70,000/-. The Agreement is also indicated to have been drawn



- by Messrs Wabomba Masinde Advocates. Although the Petitioner has denied any knowledge of this Agreement, nothing has been produced to give any indication that the same or the signatures appearing thereon are forgeries. In the circumstances, I have no reason to disbelieve that Agreement at this stage.
39. The other curious statement made by the Petitioner is that “without prejudice”, even if the Petitioner was collecting such rent, the same would be recoverable by the Protester by way of damages. The employment of the “without prejudice” rider notwithstanding, this statement sounds more like an admission of renting out the property and justifying the act.
40. I will not say more about the issue of renting out save that I put the parties and their Counsels on notice that the issue of the authenticity of the Tenancy Agreement exhibited or lack thereof will no doubt come out at the trial of the substantive Objection and that the Court will not hesitate to take severe action should it turn out that either the Protester knowingly supplied a false or forged document to the Court or that the Petitioner deliberately feigned ignorance of an authentic document executed by her.
41. I have also noted that at paragraph 8 of her Witness Statement filed herein on 18/03/2023 and which she intends to rely upon at the trial of the substantive Protest, the Petitioner has made the following statement:
- “I confirm upon the property known as Eldoret Municipality Block 14/720 my parents had erected 1 four bedroom house, 1 two bedroom guest house, 1 four room house and 1 bedsitter. My parents had leased out the developments herein for the purpose of generating income to meet their needs and occupied one of the 4 bedroom house whilst the Protester herein occupied the bedsitter”
42. From the above statement, the Petitioner does not appear to have been quite candid when at paragraph 6 of her Replying Affidavit filed on 10/02/2023 in reply to the Application herein, she took a totally contradictory position and swore on oath that the Protester has never lived within the suit property. It is never a good thing for a Court to form the opinion that a party is being deliberately evasive or selective in disclosure of information.
43. Further, the Petitioner has submitted that any actions undertaken by her are with the intention of preserving and protecting the estate. She has not however disclosed which actions these are and whether or not they are such actions as are ordinarily permitted under the Grant and whether such actions do not require the Court’s sanction.
44. Regarding the renting out of the suit property, if as alleged, the Petitioner has rented out the same, then she may need to be aware that she may be called upon to account for the same.
45. I am also unable to agree with the Petitioner’s Counsel that the orders sought herein are final orders not capable of being granted by way of an interim application. The substantive issue to be determined in the Protest or Objection is the authenticity or validity of the testamentary Will. The prayers sought at this stage are distinct from that issue and are therefore perfectly capable of being granted as interim remedy. They do not, in my view, in any way prejudge or finally determine the issues that shall be canvassed and determined after the full trial.
46. In light of the matters and circumstances recounted above, I find that the Protester has sufficiently established a prima facie case in support of her Application.
47. As regards the second condition for grant of a temporary injunction, namely, whether the Applicant stands to suffer “irreparable loss”, the Protester has submitted that herself and her children have been residing in the suit property with the deceased long before his demise, that she has known the same as her only home, that she has nowhere to go as she has no property of her own, and that the



Petitioner has taken it upon herself to frustrate the Protester in a bid to force her out of the property. Although the Petitioner has denied blocking the Protester from accessing the suit premises, in light of the contradictory positions advanced by the Petitioner, that denial does not appear quite candid. The Petitioner has also not demonstrated that the Protester has any alternative residence where she can live. I therefore agree that failure to grant the interim injunction may cause the Protester great harm since she alleges that the suit property is the only home she and her children have known and that they will be rendered homeless.

48. Regarding “balance of convenience”, I associate myself with the holding in *Pius Kipchirchir Kogo v Frank Kimeli Tenai* [2018] eKLR where it was stated as follows:

“The meaning of balance of convenience in favor of the plaintiff is that if an injunction is not granted and the suit is ultimately decided in favor of the plaintiffs, the inconvenience caused to the plaintiff would be greater than that which would be caused to the defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance of convenience it is really the balance of inconvenience and it is for the plaintiffs to show that the inconvenience caused to them would be greater than that which may be caused to the defendants. Should the inconvenience be equal, it is the plaintiffs who suffer? In other words, the plaintiffs have to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than which is likely to arise from granting it.”

49. In light of my earlier findings above on irreparable loss, I am satisfied that the balance of convenience also tilts in favour of the Protester. I therefore find that the Petitioner has satisfied all the conditions necessary for the grant of the temporary injunction.

50. Regarding “intermeddling”, the phrase is defined in Section 45 of the *Law of Succession Act*. In regard thereto, Gikonyo J in the case of *Re Estate of M’Ngarithi M’Miriti* [2017] eKLR, described “intermeddling” in the following terms:

“Whereas there is no specific definition provided by the Act for the term intermeddling, it refers to any act or acts which are done by a person in relation to the free property of the deceased without the authority of any law or grant of representation to do so. The category of the offensive acts is not heretically closed but would certainly include taking possession, or occupation of, disposing of, exchanging, receiving, paying out, distributing, donating, charging or mortgaging, leasing out, interfering with lawful liens or charge or mortgage of the free property of the deceased in contravention of the *Law of Succession Act*. I should add that any act or acts which will dissipate or diminish or put at risk the free property of the deceased are also acts of intermeddling in law. I reckon that intermeddling with the free property of the deceased is a very serious criminal charge for which the person intermeddling may be convicted and sentenced to imprisonment or fine or both under section 45 of the *Law of Succession Act*. That is why the law has taken a very firm stance on intermeddling and has clothed the court with wide powers to deal with cases of intermeddling and may issue any appropriate order(s) of protection of the estate against any person.”

51. In light of the foregoing, the parties are reminded that since the Grant has not yet been confirmed, the estate is yet to vest unto any person. Until then, all interested parties have the duty and obligation to preserve the estate and to protect it from waste. The parties are therefore cautioned to ensure that none engages in any acts that may amount or be deemed to be “intermeddling”. Any party is at liberty at any



time to move the Court accordingly for permission to carry out any substantive or necessary action that may need to be undertaken for the benefit of or to protect or to preserve the estate.

52. It is unfortunate that as a result of the manner of inheritance provided in their parents' Testamentary Will, the relationship between the Petitioner and the Protester, although "blood sisters", has taken a turn to the worst. It is regrettable that the hostility has now gone overboard and their children have equally joined in. Nevertheless, the Petitioner and the Protester are joined to the hip by fate - being siblings. Until the authenticity or validity of the Will is determined by the Court, they have no choice but to continue co-existing and to share the suit property. Having said so, I may also perhaps just add in passing that although the Protester argues very strongly that she has no other home to go to, the fact is that she will have to appreciate the reality that should at the end of the substantive trial, the Will be found by the Court to be valid and authentic, then she will have to accept the fact that the same was bequeathed to Petitioner. She therefore has to live with this possibility and be ready for any eventuality should it turn out that way.

Final Orders

53. In the end, the Petitioner's Chamber Summons dated 17/01/2023 succeeds and I dispose of it in the following terms:
- i. I make a declaration that until this Succession Cause is concluded, neither of the parties herein has a right to block or prevent the other and/or the others' family members or visitors from accessing or exiting the property known as Eldoret Municipality Block 14/720 (hereinafter referred to as "the suit property").
 - ii. However, as the Administratrix, the Petitioner is the one entitled to or bestowed with the right to deploy, hire or employ security personnel or guards to protect and secure the suit property. In regard thereto, all parties, including the Protester, her family and her visitors, must comply with the requirement of signing the security personnel's record books during entry or exit.
 - iii. Pending the hearing and determination of this Succession Cause, the Protester and her family shall be permitted, without any hindrance, to continue occupying or residing within the portion of the suit property that they are currently occupying.
 - iv. The Protester shall however, unless invited by the Petitioner or the Petitioner's authorized representative, refrain and/or desist from trespassing, accessing or entering into the portion of the suit property currently occupied by or under the custody or management of the Petitioner. The Protester, her family and her visitors shall therefore at all times confine themselves to the portion of the suit property currently occupied by the Protester.
 - v. While within the suit property, the Protester, her family and her visitors shall at all times recognize, respect and honour the Petitioner's position and status as the sole Court appointed Administratrix of the estate and shall conduct themselves and/or behave in a civil and respectful manner and avoid any actions that might cause any confrontation, disturbance, hostility to or in any way endanger the Petitioner, her family or visitors. Breach of any of these guidelines shall lead to swift and severe sanctions against the Protester and/or her family or visitors.
 - vi. Save in the event of non-payment of bills to the utility or service providers, electricity and water supply to the portion of the suit property occupied by the Protester as aforesaid, shall not be interfered with, disconnected or frustrated.
 - vii. This being a family matter, I make no order on costs.



DELIVERED, DATED AND SIGNED AT ELDORET THIS 19TH DAY OF JANUARY 2024.

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WANANDA J.R. ANURO

JUDGE

