



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Moses Kiptonui Bii alias Moses Arap Bii alias Musa bii alias Moses Bii (Deceased)
(Succession Cause E043 of 2021) [2024] KEHC 2699 (KLR) (6 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2699 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE E043 OF 2021**

JK SERGON, J

MARCH 6, 2024

**IN THE MATTER OF THE ESTATE OF MOSES KIPTONUI BII
ALIAS MOSES ARAP BII ALIAS MUSA BII ALIAS MOSES BII
(DECEASED)**

BETWEEN

NAOMI CHEPKOECH APPLICANT

AND

JOYCE CHEPNGETICH JAMES RESPONDENT

RULING

1. The application coming up for determination is a notice of motion dated 29th December, 2023 seeking the following orders;
 - (i) Spent
 - (ii) Spent
 - (iii) That pending the hearing and determination of this application, this honourable court be pleased to grant a temporary injunction restraining the respondent herein whether by herself, her servants, agents, employees and/or anyone acting on her authority from selling, disposing of, subdividing, alienating, wasting, planting, leasing or otherwise intermeddling with the property of the deceased referenced as Kericho/Kabianga/1428.
 - (iv) That pending the hearing and determination of the applicant's protest against confirmation of grant, this honourable court be pleased to grant a temporary injunction restraining the respondent herein whether by herself, her servants, agents, employees and/or anyone acting on her authority from selling, disposing of subdividing, alienating, wasting, planting,



leasing or otherwise intermeddling with the property of the deceased referenced as Kericho/Kabianga/1428.

- (v) The costs of this application be borne by the Respondent.
2. The application is premised on the grounds set out on the face of it and the facts deponed in the supporting affidavit of Naomi Chepkoech Bii the applicant herein.
 3. The applicant avers that she is the widow to the deceased in the instant succession cause and further that the deceased prior to his demise had settled her together with her children on the parcel of land known as Kericho/Kabianga/1428.
 4. The applicant avers that the distribution of the estate of the deceased in the instant succession cause is still pending and further that on 23rd December, 2023 the respondent acting out of malice and in concert hired her servants, agents and/or employees invaded the suit land and started ploughing the same.
 5. The applicant therefore seeks orders preventing the respondent from intermeddling and/or interfering with the use and enjoyment of the said parcel of land without following due process of the law.
 6. The respondent filed a replying affidavit in response to the application dated 29th December, 2023 which was sworn by Joyce Chepngetich James the respondent herein.
 7. The respondent avers that the parcel known as Kericho/Kabianga/1428 measuring 8.0 HA forms a substantial part of the estate of the deceased and that in the aftermath of their father's demise the applicant continues to benefit from a vast part of the estate to the exclusion of a majority of the beneficiaries.
 8. The respondent avers that contrary to the applicant's assertion, she did not act out of malice rather as a rightful beneficiary of the estate and she sought the services of a tractor to till a part of the farm, to utilize the same as it was vacant and that the applicant's sons forcefully evicted them from the land and issued threats precipitating criminal proceedings in court vide Kericho CMCC No. E316 of 2024.
 9. The respondent avers that the applicant had not satisfied the threshold for granting an order for injunction.
 10. The respondent avers that the instant application is a deliberate attempt by the applicant to abuse the court process by delaying the conclusion of the instant succession cause and the application is ill intended, frivolous, vexatious and therefore ought to be struck out with costs.
 11. This court directed the parties to file written submissions. The applicant complied and filed written submissions.
 12. The applicant submitted that she met the conditions for a temporary grant as set out in *Giella v Cassman Brown Co. Ltd* 1973 E.A 358. Firstly, she argued that she had a prima facie case as the suit property forming part of the deceased's estate was pending distribution and that the respondent acting out of malice and in concert with hired servants, agents and/or employees invaded the suit property and started ploughing it. 13. Secondly, the Applicant argued that she would suffer irreparable injury which cannot be compensated by damages unless the injunction is granted and should the respondent's conduct be entertained the suit property would be wasted.
 13. Thirdly, she urged this court to consider the party that would suffer the greatest harm from granting or refusing the injunctive remedy pending the determination of the instant succession cause on its merits and cited the case of [*Paul Gitonga Wanjau v Gathuthi's Tea Factory Company Ltd & 2 Others*](#) (2016)



eKLR whereby the court discussed the issue on balance of convenience at length and held that the court will seek to maintain the status quo in determining where the balance of convenience lies.

14. The applicant contended that the respondent did not have a grant of representation on the estate of the deceased and therefore the act of ploughing on the suit property amounted to intermeddling with the estate and cited section 45 (1) and (2) of the *Law of Succession Act*.
15. Having carefully considered the material placed before this court, it is clear from the averments of both the applicant and the Respondent that the applicant has been utilizing the parcel of land known as L.R. No. Kericho/Kabianga/1428. In paragraph 3 of the Supporting Affidavit, Naomi Chepkoech Bii, the Applicant herein swore as follows:

“ 3. That the deceased prior to his demise, had settled me together with my children in the suit land referenced as Kericho/Kabianga/1428.”

16. In response to the aforesaid averments Joyce Chepngetich James, the Respondent deponed in Paragraphs 3 and 6 of her Replying Affidavit as follows:-

“ 3. That in response to paragraph 1 of the Applicants Supporting Affidavit sworn on 29th December, 2023, when our mother passed on, the applicant attempted to take possession of our mother’s house and after failing, she abandoned the matrimonial home that had been built for her on Kericho/Kabianga/1784 which house is still standing and in her possession and got our father to build her another house on a part of the parcel known as Kericho/Kabianga/1428.

6. That the said parcel of land known as Kericho/Kabianga/1428 measures approximately 8.0 Ha and forms a substantial part of the Estate and in the aftermath of my father’s demise, the applicant has excluded the rest of us from utilizing not only the said parcel but almost 90% of the Estate.”

The death certificate attached to the supporting Affidavit filed in support of the Petition of Letters of Administration indicates that Moses Kiptonui Bett died on 21st June, 2020.

17. It is apparent from the aforesaid averments that the applicant was put into occupation of the parcel of Land known as L.R. No. Kericho/Kabianga/1428. It would appear she has been utilizing the aforesaid parcel of Land prior to the deceased’s demise to the exclusion of the Respondent and her siblings.
18. It is also not disputed by the Respondent that she entered and started ploughing the aforesaid parcel of land on 23rd December, 2023 thus disputing the status quo which has been in existence since the deceased died in the year 2020. The act of moving into the aforesaid parcel obviously interrupted the Applicant’s use and occupation. Both the Applicant and the Respondent are beneficiaries of the Estate of Moses Kiptonui Bii, deceased. The Estate is yet to be distributed.
19. The question which begs for an answer is whether the orders sought should be issued. I have already outlined the grounds relied upon by the Applicant. It is the applicant’s assertion that the Respondent’s actions amounts to intermeddling with the deceased’s Estate. In my respective view, I do not think the Respondent’s action amounts to intermeddling with the deceased’s Estate. The undisputed fact is that the applicant has been in occupation and possession of L. R. No. Kericho/Kabianga/1428 before and



after the demise of the deceased. The Respondent's act of invading and ploughing the aforesaid parcel has in essence disrupted the Applicant's use and occupation of the same.

20. The Application may not meet the threshold required in the ordinary order of injunctions as spelt out in the case of *Giella v Cassman Brown & Company Limited*. This is a unique case where the Court must step in issue necessary orders in exercise of its inherent power to maintain the estate property and harmony amongst the beneficiaries pending the determination of the succession dispute.
21. I have taken into account the fact that the suit property to wit Kericho/Kabianga/1428 constitutes the estate of the deceased which is pending distribution in this court and that the parties are beneficiaries of the deceased's Estate. It is important at this stage to preserve the status of the Estate property. There is need also to forestall further developments and constructions in the property constituting the estate of the deceased until the protest and the summons for confirmation of grant is heard and determined.
22. I have also considered the fact that both the applicant and respondent have a beneficial interest in the estate of the deceased which is pending distribution in this court and I find it prudent to issue an order to maintain the status quo for the sole purpose of preserving the Estate property constituting the estate of the deceased herein.
23. In the case of *Thugi River Estate Limited & another v National Bank of Kenya Limited & 3 others* [2015] eKLR, Onguto J. stated that an order of status quo can be given by the court exercising its general jurisdiction and that the order need not necessarily be prayed by the parties and in fact, can be originated by the court. The Learned Judge held that; "Firstly, an order of status quo will issue through a judicial process. Where the court in exercise of its general or statutory jurisdiction grants orders for maintenance in situ of a particular state or set of facts... the second or alternative order for status quo is the one issued by the court as a case management strategy. It is issued to provide assistance to the case. It also maintains a particular state of affairs or set of facts. Unlike a conservatory order or injunctive order, it is not descriptive. It is originated either by the court or by the consent of the parties. Often the court would not have been moved by either party. The court then expects an existing state of affairs or facts to be preserved until a particular occurrence or until the courts' further orders. It is intended to also freeze the state of affairs. State of affairs however do not always remain static, so it is always crucial for the court to be very specific and neat in its description of what state of affairs is to be preserved."
24. Consequently, the notice of motion application dated 29th December, 2023 is found to be without merit. The same is dismissed. However, there is need to maintain the status quo pending the determination of the summons for confirmation of grant and the protest. In exercise of this court's inherent jurisdiction, I hereby grant the following orders and directions.
 - (i) That the beneficiaries of the estate of Moses Kiptonui Bii alias Moses Arap Bii alias Musa Bii alias Moses Bii, deceased should continue occupying and utilizing the parcels they were as of 22nd December, 2023 pending the hearing and determination of this succession dispute.
 - (ii) The portions which had not been occupied, ploughed or utilized shall remain unoccupied, unploughed and unutilized pending the hearing and determination of this Petition.
 - (iii) Consequently, the Respondent is barred from further occupying, tilling, ploughing and utilizing the portion she forcefully entered on 23/12/2023.
 - (iv) This succession cause to be heard on priority basis.
 - (v) Each party to bear its own costs.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 6TH DAY OF MARCH, 2024.



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J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

Miss Lang'at holding brief for Kipngetich for 2nd Petitioner

Koech for the 1st Petitioner

Miss Otieno holding brief for Ozwara for 2nd & 3rd Protestors

