



In re Estate of Jecinter Njoki Okoth (Deceased) (Succession Cause 9 of 2018) [2024] KEHC 12701 (KLR) (23 October 2024) (Ruling)

Neutral citation: [2024] KEHC 12701 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
SUCCESSION CAUSE 9 OF 2018
SM GITHINJI, J
OCTOBER 23, 2024**

IN THE MATTER OF THE ESTATE OF JECINTER NJOKI OKOTH (DECEASED)

BETWEEN

SIMON HAROLD SHIELS PETITIONER

AND

MARY AKINYI OKOTH 1ST RESPONDENT

ANTHONY OTIENO OKOTH 2ND RESPONDENT

RULING

Representation:

Khaminwa & Khaminwa advocates for the Petitioner

Kithi & Co Advocates for the Respondents

1. For determination is the Application by the Petitioner vide the Summons dated 15th June 2022 brought under Rules 49 and 73 of the Probate and Administration Rules seeking the following orders;
 1. Spent.
 2. That the court bailiff Isaac Ntongai Samwel be allowed to break into all that residential house situate at Mtangani, Malindi more particularly the White house and guest house standing on Plot Number 4843 (Orig No. 1935/583) and Plot No. 4842 (Orig No. 1935/582).
 3. That costs be in the cause.
2. The Application is founded on the grounds set out on its face and on the supporting affidavit of Simon Shiels who deponed that he received a court order on 16th December 2021 allowing him to access the residential/matrimonial home otherwise known as the white house and the guest house. That ever



since he has been meted with obstacles, threats, assaults and malicious damage to property by the step children who despite the court's judgment do not acknowledge him as the administrator in the estate and the surviving spouse. He also averred that he had offered a fair distribution of the estate which the step children do not appreciate and through external forces and or third parties have vowed not to allow him entry into the property. Additionally, this has found its way on social media, dailies and even to the extent of preferring alternative charges aimed at dissuading him from administering the estate.

3. Mr. Simon Shiel further stated that he engaged the services of a court bailiff one Mr. Issac Ntongai Samwel whose attempt at gaining access into the building was thwarted despite being in the company of police officers as shown in his affidavit in execution dated 9th June 2022. He additionally stated that not having applied for review of the said orders or appealed against the same, it therefore follows that the step children were complacent with the decision. Further, that he seeks break in orders to enable him inspect the state of repair, take inventory and be in control of the premises as shown in the list of distribution as per the certificate of confirmation of grant issued on 17th December 2021.

Disposition

4. From the record before me, the Respondents did not file any response to the application. On 04.03.24, the court directed that both parties file their submissions. By the time of writing this ruling, the petitioner had not filed his submissions. The submissions on record by the Petitioner filed on 25th July 2024 address the Application dated 24th November 2021 which application is long overtaken by events as the court rendered itself. The Respondents did not also file any submissions. Nonetheless, I will proceed to make a determination on whether the order sought to have the court bailiff break into the suit property known as white house is merited.
5. I have considered the application and the grounds it is founded on. Upon perusal of the file, it is very clear that this court rendered itself in the re-issuance of certificate of confirmation of grant dated 17th December 2021 wherein the Applicant was granted in full share UK Plaza on Plot No. 16419 (Orig. No 12240/8 and white house on Plot No. 4843 (Orig No. 1935/583) and Plot No. 4842 (Orig. No. 1935/582). The Said confirmation of grant has never been set aside/ reviewed nor appealed against. It therefore appalls this court that the Respondents would hinder the Petitioner from taking possession of the properties. These were the orders of the court and orders of the court are self-executing and do not require external forces to be executed. However, where it is apparent that a party is unreasonably and unlawfully attempting to obstruct a lawful process or the cause of justice, a court of law will not hesitate to stamp its seal of authority using the lawful agencies of the state. I am satisfied that the current application for the use of the court bailiff to oversee the execution of this court's order is merited. This court has the duty to give effect to its orders, and if a party is inclined to disobey the court orders, the court in exercise of its inherent jurisdiction will ensure compliance. In the case of Easter Radio Service – Vs – Tiny Tots Civil Appeal No. 43 of 1966 the Court of Appeal stated thus: -

“if a litigant in the cause of the proceedings for the determination of such further matters wilfully disregards an order of the court, the court must have an inherent jurisdiction to make an appropriate order. . .”

6. That said, I find merit in the Petitioner's Application and make the following orders;
 1. That the court bailiff Isaac Ntongai Samwel be and is hereby allowed to break into all that residential house situate at Mtangani, Malindi more particularly the White house and guest house standing on Plot Number 4843 (Orig No. 1935/583) and Plot No. 4842 (Orig No. 1935/582).



2. No orders as to costs.

RULING READ, SIGNED AND DELIVERED VIRTUALLY AT MALINDI THIS 23RD DAY OF OCTOBER, 2024.

.....

S.M. GITHINJI

JUDGE

In the presence of; -

1. Dr Khaminwa for the Applicant

2. Mr Kithi for the Respondents - absent

