



In re Estate of Geoffrey Israel Wandera (Deceased) (Succession Cause E526 of 2020) [2023] KEHC 22507 (KLR) (Family) (21 July 2023) (Ruling)

Neutral citation: [2023] KEHC 22507 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE E526 OF 2020
MA ODERO, J
JULY 21, 2023
IN THE MATTER OF THE ESTATE OF GEOFFREY ISRAEL WANDERA (DECEASED)**

BETWEEN

ROSELYN AKUMU OCHUMO WANDERA PETITIONER

AND

ELIZABETH ACHEWE MUYONGA OBJECTOR

RULING

1. Before this court for determination is the summons dated September 20, 2022 by which the applicant Roselyne Akumu Ochumbo Wandera seeks the following orders:-
 - “1. Spent.
 2. That the Officer Commanding (OCS) Matunda Police Station do supervise and enforce the order issued by this court on June 3, 2022.
 3. That costs of this application be provided for.”
2. The application which was premised upon rule 73 of the *Probate and Administration Rules* was supported by the affidavit of even date sworn by the applicant.
3. The respondent Elizabeth Achewa Muyonga opposed the application through her replying affidavit dated November 6, 2022. The application was canvassed by way of written submissions. The applicant filed the written submissions dated February 10, 2023 whilst the respondent relied upon her written submissions dated February 20, 2023.



Background

4. This succession cause relates to the estate of the late Geoffrey Israel Wandera who died intestate at the Aga Khan University Hospital on January 5, 2020. Annexed to the supporting affidavit dated October 8, 2021 is a copy of the death certificate serial number 0xxx1.
5. Following the demise of the deceased the applicant in her capacity as the widow of the deceased sought and obtained a grant of letters of administration intestate which grant was issued to her on March 19, 2021.
6. The respondent asserts that she is also a widow to the deceased having been married by the deceased in the year 2012 under Luyha Customary law.
7. On June 3, 2022 this court delivered a ruling in which the following orders inter alia were made
 - “(1) pending the hearing and determination of the summons for revocation of grant dated November 11, 2021 both applicant Roselyn Akumu Ochumbo Wandera and the respondent Elizabeth Achewa Muyonga be and hereby are restrained from felling trees, mining sand and soil and committing acts of waste on land parcel number Kakamega/Nzio/10/194.”
8. The applicant now alleges that despite having been served with the said order the respondent continues to flout the orders by felling trees, mining soil and sand as well as committing other acts of waste on land parcel Kakamega/Nzio/10/194 (hereinafter ‘the suit land’)
9. The applicant therefore seeks orders directing the OCS Matunda Police Station to enforce the orders made by the court on June 3, 2022.
10. The respondent in opposing the applicant’s prayers for police supervision and enforcement of the courts orders contends that the applicant ought to have filed contempt proceedings against her. The respondent denies that she has in any way breached the orders of the court.

Analysis and Determination

11. I have considered the application before this court, the reply filed thereto as well as the written submissions filed by both parties. The only issue for determination is whether the applicant’s prayer for police assistance to enforce the orders made by the court has merit.
12. The applicant has averred that the respondent has been acting in breach of court’s orders by felling trees, mining sand and committing other acts of waste on the suit land. No evidence has been tendered at all to prove these allegations. No photographs taken at the land to show mining of sand or felled (cut) trees have been annexed to the supporting affidavit.
13. The applicant claims that she reported the acts of wastage committed by the respondent at Matunda Police Station again there is no evidence to support this claims. No OB extract has been produced as evidence of a report having been made.
14. Finally, I do agree with the respondent that in instances where there is alleged to have been a breach of court orders then the proper procedure would be to apply to have the alleged contemnor cited for contempt. The court cannot order police to intervene unless it is satisfied that there has in actual fact been a willful refusal to adhere to court orders.



15. In the circumstance of this case I find that no proof has been availed to show that the respondent has breached the orders made by the court on June 3, 2022. Accordingly, I find no merit in the application dated September 20, 2022. The same is hereby dismissed in its entirety. Costs will be met by the applicant.

DATED IN NAIROBI THIS 21ST DAY OF JULY, 2023.

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MAUREEN A. ODERO

JUDGE

