



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

**MISCELLANEOUS CITATION NO. E003 OF 2021**

**IN THE MATTER OF THE ESTATE OF KIPRONO ARAP MISOI (DECEASED)**

**IN THE MATTER OF AN APPLICATION FOR PRESERVATION OF THE ESTATE OF THE DECEASED**

**BETWEEN**

**TECLA CHEPCHUMBA.....CITOR/APPLICANT**

**AND**

**JEPKINYOR MISOI.....CITEE/1<sup>ST</sup> RESPONDENT**

**RULING**

[1] Before the Court for determination is the application dated **19 January 2021**. It was filed by the Citor, **Tecla Chepchumba** pursuant to the provisions of **Rules 49, 63 and 73** of the **Probate and Administration Rules**, among other provisions of the law for orders that:

[a] Spent

[b] The Court be pleased to issue a temporary injunction restraining the Citee/Respondent, either by herself, her agents and/or servants, from encroaching, evicting and/or interfering with the Citor/Applicant's occupation and quiet possession of the portion of land measuring 7 acres of that property known as Nandi/Surungai/1, pending the hearing and determination of this application *inter partes* and thereafter pending the hearing and determination of the Citation and/or Succession proceedings.

[c] Costs of the application be provided for.

[2] The application was premised on the grounds set out on the face of the application and the Supporting Affidavit annexed thereto, namely: that the deceased, **Kiprono Arap Misoi** died intestate in the year **2009** or thereabouts; and that no grant has ever been issued in respect of his estate. It was further averred that the deceased, in his lifetime, was married to wives, namely: **Tecla Gemeli David** (1<sup>st</sup> wife) and **Jepkinyor Misoi** (2<sup>nd</sup> wife); and that since **Tecla Gemeli David** had no children of her own within the first 10 years of marriage to the deceased, the deceased got married to **Jepkinyor Misoi** with whom he bore several children. That in the year **2001**, **Tecla Gemeli David** approached the applicant for a woman to woman marriage as practiced under Nandi customary law for the purpose of procreation.

[3] It was therefore the averment of the applicant that, under the arrangement aforementioned, the deceased gave her 7 acres of his land **Parcel No. Nandi/Surungai/1** on which she set up her homestead with **Tecla Gemeli David**; and that she had been living on the property for over 15 years now. The applicant further stated that after the death of **Tecla Gemeli David** on **22 July 2019**, the respondent and her children have, on several occasions, sought to evict her from the suit property; which attempts were only averted upon the intervention of the Assistant County Commissioner. She was therefore apprehensive that unless the orders sought are granted her, she may, at any time, be evicted by the respondent and her children from her only known place of abode.

[4] The respondent, **Jepkinyor Misoi**, opposed the application vide her Replying Affidavit sworn on **2<sup>nd</sup> February 2021**. She averred that her deceased husband, **Kiprono Arap Misoi**, had expressed his wishes as to how his estate was to be distributed. She denied that the applicant is her co-wife as alleged; or that there was any customary law marriage between her and **Teresa Gemeli David** who was the deceased's 1<sup>st</sup> wife. Thus, she asserted that the applicant's occupation of land Parcel No. Nandi/Surungai/1 is unlawful, as she is not entitled to any piece of land belonging to the deceased. She therefore prayed for the dismissal of the instant application.

[5] By dint of **Section 47** of the **Law of Succession Act**; the Court has powers to make such orders as are necessary for the ends of justice herein. It provides that:

**“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...”**

[6] Similarly, Rule 73 of the Probate and Administration Rules, which is one of the enabling provisions cited by the applicant, provides that:

**“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.”**

[7] Accordingly, and in the light of the foregoing provisions, I have given consideration to the application; particularly the averments set out in the Applicant’s affidavit and the annexures in support of the assertions. I note that, in support of the application, the applicant annexed documents from the Office of the Chief, Kimngoror Location as well as Minutes of a Meeting held by a panel of elders on **14 July 2020** under the chairmanship of the Assistant County Commissioner, Chepterwai Division. Those Minutes show that the elders were convinced that there was justifiable cause for the applicant to reside on the subject property. Moreover, the applicant annexed a copy of a letter dated **26 November 2020** written by the Assistant County Commissioner, Kipkaren Division reiterating that the applicant rightfully inherited 7 acres of land from the late **Mrs. Boit Chelule** in accordance with Nandi Cultural laws. The respondent was accordingly warned thus:

**“It has however, come to the attention of this office that you have continued to trespass and cause disturbance on the said piece of land which is contrary to the resolutions of the meeting. This is therefore to warn you to desist from this illegal act otherwise the law will take its course...”**

[8] While dismissing the resolution made by the elders as inconsequential, the respondent acknowledged that the applicant is indeed occupying the suit property; and that there was a meeting held by their larger family over the applicant’s allegations. There is therefore an acknowledged dispute in respect of a piece of property that forms part of the estate of the deceased that involves the applicant. There appears to be no dispute that the respondent is the widow of the deceased. The applicant has filed a citation that is yet to be disposed of, contending that the respondent has failed and/or neglected to apply for Grant of Letters of Administration Intestate in respect of the deceased’s estate.

[9] In the premises, I am satisfied that sufficient cause has been shown for the issuance of the orders sought pending further proceedings herein. Accordingly, it is hereby ordered that:

**[a]** A temporary injunction be and is hereby issued restraining the Citee/Respondent, either by herself, her agents and/or servants, from encroaching, evicting and/or interfering with the Citor/Applicant’s occupation and quiet possession of the portion of land measuring 7 acres of that property known as **Nandi/Surungai/1**, pending the hearing and determination of the Citation.

**[b]** That costs of the application be costs in the cause.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 15<sup>TH</sup> DAY OF MARCH 2021**

**OLGA SEWE**

**JUDGE**