



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT GARISSA

CIVIL APPEAL NO. 8 OF 2019

OMAR ABDI ISSACK.....APPELLANT

VERSUS

MALABO HARED.....1ST RESPONDENT

FATUMA HASSAN.....2ND RESPONDENT

RULING

1. The application subject of this ruling is dated the 22nd of September 2020. Prayer 1 and 2 thereof are spent. The prayers being sought for now are:

-That an Order of temporary injunction do issue to restrain the Appellant by himself, his agents, servants, employees or anyone under his instructions or authority from transferring, assigning, taking possession of, demolishing structures, developing or in any manner whatsoever dealing with the parcels of land known as Plot No. 79, Plot No. 1/79 and Plot No. 1/154 all situate in Garissa town and which form part of the estate of the deceased, pending hearing and determination of this appeal.

-That the Honourable Court be pleased to issue an Order directing that all rental income collected from the properties Plot No. 97, Plot No. 1/79 and Plot No. 1/154 be held in an escrow account in the names of the law firms representing the parties in the appeal pending hearing and determination of the appeal.

-The Honourable Court be pleased to issue an Order directing the Officer Commanding, Garissa Police Station to supervise and ensure compliance with the court order.

-Costs.

2. The application is predicated on grounds that following Kadhi Succession Case No. 16 of 2017 the properties that belong to the estate of the deceased herein and despite the judgement of the Kadhi have continued to be intermeddled with by the Appellant thus exposing the estate which ought to be distributed to the beneficiaries and there is need to preserve the estate pending the outcome of the appeal.

3. The application is opposed vide the affidavit of Asha Abdi Issack a representative of the Appellant and which is dated 19th October, 2020.

4. The Appellant's representative argues that title No. 1/154 belongs to the Appellant by virtue of a title deed issued in his name and as the rightful owner the Appellant decided to renovate the said property and the Respondents have been a constant nuisance thus hampering any development on the said property.

5. The Appellant having been aggrieved by the decision of the Kadhi preferred this appeal. It is his Constitutional right so to do, however this is not a ticket to intermeddle with the estate.

6. The Respondents appear to support the decision of the Kadhi. They have a judgement in their favour and equally have a right to want to preserve the estate.

7. The view of this court therefore is that the properties in question be preserved pending hearing and determination of the appeal so that at the time of determination, the estate will not have been wasted.

8. And in order not to heard any of the parties it is ordered;

- a. That any of the beneficiaries who were in occupation of any of the properties as at the time of the Kadhi's judgement do continue to occupy the premises.
- b. A temporary injunction do issue against the Appellant and all other beneficiaries or their agents, servants, employees or anyone under their instructions or authority from transferring, assigning, demolishing structures, developing, electing new structures or in any manner whatsoever intermeddling with Plot No. 79, Plot No. 1/79 and Plot No. 1/159 pending hearing and determination of the appeal.
- c. Income accruing from the three properties above be placed into an escrow account in the names of the law firms appearing for the parties in this appeal pending hearing and determination of the appeal.
- d. A record of appeal be filed and served within the next 15 days.
- e. And the appeal set down for hearing within the next 60 days.
- f. The D.R. to ensure that 2 Kadhi's are present at the hearing.
- g. Costs in the cause.

DELIVERED AND SIGNED AT GARISSA THIS 10TH DAY OF JUNE, 2021

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ALI-ARONI

JUDGE