

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS

FAMILY DIVISION
SUCCESSION CAUSE NO. 23 OF 2020

IN THE MATTER OF THE ESTATE OF ROBERT WACHIRA PAUL (DECEASED)

SAMUEL NDEGWA NJORGE.....APPLICANT

VERSUS

LUCY MUTHONI NJIRU.....RESPONDENT

RULING

1. The deceased Robert Wachira Paul died intestate on 10th January 2020. He left a widow Lucy Muthoni Njiru (the respondent) and two children: Charles Brian Wachira and Joyce Wangui Wachira. It is admitted that, while alive, the deceased and the applicant Samuel Ndegwa Njoroge had a partnership business called Samrob Engineering Enterprises. The respondent did not participate in the business. She pleaded that she did not know its affairs, financial or otherwise. On 18th April 2020 she was appointed the administrator of the estate of the deceased.

2. The present application by the applicant was dated 23rd October 2020. The subject of the application was welding machines, 4 gas cylinders, 3 grinding machines, 2 drilling machines, 2 jacks, 3 ladders, arc welding, tool box, compressor machine, riveting machine, and vice bench all worth Kshs.897,809/= which the applicant stated belonged to the partnership. His case was that the two partners had equal stake. Upon the deceased's death, he stated, the partnership ended. On 21st June 2020 he was involved in a road accident and got bed-ridden. The business could not run and incurred rent arrears of Kshs.270,000/=. The property was in the yard that had attracted the rent arrears. On 14th October 2020 the respondent and unknown people broke into the yard and carried away these goods to unknown place, he stated. He filed this application seeking the following orders:-

“2. The Applicant be allowed to repossess 4 welding machines, 4 gas cylinders, 3 grinding machines, 2 drilling machines, 2 jacks, 3 ladders, arc welding, toolbox, compressor machine, riveting machine and vice bench all worth Kshs.897,809 on behalf of Samrob Engineering Enterprises that were illegally and forcibly from the yard located on Kangundo Road;

3. A Temporary Injunction issue, restraining the Respondent by herself, her agents, employees, servants and or agents or otherwise assigns and or any person whatsoever acting on her behalf and/or under her mandate and or instructions from alienating, offering for sale, selling, charging, disposing by way of sale, gift or transfer to any party or interfere in any way with the partnership equipment pending the hearing and determination of this Application;

4. A Temporary Injunction issue, restraining the Respondent by herself, her agents, employees, servants and or agents or otherwise assigns and or any person whatsoever acting on her behalf and/or under her mandate and or instructions from alienating, offering for sale, selling, charging, disposing by way of sale, gift or transfer to any party or interfere in any way with the partnership equipment pending the hearing and determination of this Suit;

5. That the OCS Ruai Police to provide security during the execution of instruction to repossess on the equipment.

6. That the costs of the application be borne by the respondent.”

5. The response by the respondent was that she was a stranger to the alleged breaking into the alleged premises and taking away the goods. She asked that the application be dismissed for being an abuse of the process of the court, for want of jurisdiction and for lacking the merits. In paragraph 13 of her response, she stated as follows:-

“13. THAT in reply to paragraph 12, I wish to state that upon the respondent herein clearing all the rent arrears and the land lard remaining with possession the said property/premises, the instant application is an exercise of futility.”

The respondent appeared to be saying that she paid the rent arears but that the landlord was left with the goods and the premises.

3. There is a dispute between the applicant and the respondent over the partnership property and what has happened to them. The partnership arrangement was between the deceased and the applicant. The property was in a yard that the partners had rented. The yard had accrued rent of Kshs.270,000/=. The goods were said to be worth Kshs.897,809/=. Now that the value of the goods was known, can the applicant say that, if the application for interlocutory injunction is not granted, he will suffer irreparable loss? I ask the question because, now that the claim has been made against the administrator of the estate of the deceased, the estate has substantial assets and property whose value is well in excess of the said Kshs.897,809/=.

4. I consider that when the respondent filed this petition seeking grant of letters of administration intestate, she listed the estate of the

deceased. The list included Samrob Engineering Enterprises. According to her, the property of the entity belonged to the estate of the deceased. If she took the property in question on the basis that she was protecting the estate of the deceased, and now the applicant is saying that the partnership ended upon the death of the deceased and therefore the property of the partnership became exclusively his, then there is the question of the competence of the application to deal with. This is because, a succession court is mandated under **section 3** of the **Law of Succession Act (Cap 160)** to deal with the free property of the deceased. Where there is a dispute between a third party and the administrator of the estate of the deceased regarding whether the property in question belonged to the deceased or the third party, and the question cannot be conveniently determined, the court is asked by **rule 41(3)** of the **Probate and Administration Rules** to set aside the particular property (as it continues to confirm the estate) to abide the determination of the question under **Order 37 rule 1** of the **Civil Procedure Rules**. The applicant, in seeking to have the question determined, has to bring an originating summons to resolve the issue. It follows that the questions in the application cannot be determined through the application.

5. These are the reasons why I dismiss the application with costs.

DATED and DELIVERED at NAIROBI this 21ST day of JULY 2021.

A.O. MUCHELULE

JUDGE