



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**SUCCESSION CAUSE NO. 241 OF 1999**

**IN THE MATTER OF THE ESTATE OF JOHANA OCHESO MBEBA (DECEASED)**

**RULING**

1. This matter is part-heard on a summons for confirmation of grant, where a protest has been filed. Mid-stream, an application has been filed seeking conservatory orders relating to utilization of estate assets pending hearing and determination of the application on distribution of the estate. The applicants claim to be the ones entitled to use the land, and accuse the respondents of ploughing the land to their doorstep. The respondents contend that they were the ones entitled to use the same.

2. Issues as to who is entitled to use the land, are issues that are live in the ongoing proceedings. It is not an issue that I can deal with at this stage. I can only address the issue of maintenance of *status quo* pending finalization of the ongoing hearings, *status quo* should be maintained to allow the court conclude the hearings, and to make determinations as to who is entitled to which land. I have no way of telling, from the affidavits filed, who the *status quo* favours.

3. I shall accordingly direct that the Deputy Registrar of the court visits the land on 27<sup>th</sup> September 2021, for the purpose of ascertaining the *status quo*, to facilitate the making of conservatory orders. The police officer in charge of the local police station, which I believe to be Matungu Police Station, shall provide security for the purpose of that exercise.

4. The matter is due for hearing on 28<sup>th</sup> September 2021. The Deputy Registrar shall ensure that a report of the visit is filed before then. It is so ordered.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 17<sup>TH</sup> DAY OF SEPTEMBER 2021**

**W. MUSYOKA**

**JUDGE**