



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT BUNGOMA**

**P & A NO. 174 OF 2014**

**IN THE MATTER OF THE ESTATE OF JAMES WAMALWA WANGILA-DECEASED**

**CHRISTOPHER SIMIYU WAMALWA.....1<sup>ST</sup> PETITIONER**

**WILBERFORCE WANGILA WAMAI.....2<sup>ND</sup> PETITIONER**

**-VERSUS-**

**BEATRICE NANJALA**

**KOLOLI WAMALWA.....INTERESTED PARTY/RESPONDENT**

**RULING**

By an application dated 9<sup>th</sup> June, 2021, the petitioners seek;

- 1. An order do issue directing all tenants on the land parcel number Bungoma/Municipality/105 to deposit monthly rent in court pending the hearing and determination of this application inter-parties.*
- 2. An order do issue directing all tenants on the land parcel number Bungoma/Municipality/105 to deposit monthly rent in court pending the hearing and determination of this cause.*
- 3. The respondent be compelled to give a full and accurate account of the rent received on behalf of the estate from the time of the demise of the deceased on 7/8/1997 to date.*
- 4. The Land Registrar Bungoma County be compelled to furnish the court with parcel file in respect of land parcel number Bungoma/Municipality/105.*
- 5. Costs.*

The application is supported by the affidavit of the 1<sup>st</sup> petitioner who depones that there is need to deposit the monthly rent in court to avoid further wastage, and the same can be distributed by the court among the dependants, that despite the land registrar being directed to furnish the court with the parcel file, he is yet to comply and that unless the orders sought are granted, the estate stands to be further wasted to his detriment.

The respondent filed her replying affidavit stating that the parcel of land mentioned is her matrimonial home since she married the deceased and has developed it from her salaries and monies given to her by her late father. She depones that the plot has 2 tenants each paying Kshs 3,500/= per month which income she uses to offset the land rates and rent which runs to Kshs 20,000/= annually.

She depones that the deceased had plot number 3, Ndengelwa Market and E. Bukusu/S. Sanga'alo/865 which are fully developed and in control of the applicant and E. Bukusu/N.Sang'alo/2193 where the applicant cultivates sugar cane. That she never sought to know how much the applicant collects therefrom.

The parties filed their submissions which have been duly read and considered. It is the duty of the court to determine whether the applicant is entitled to the orders sought.

It is important to state from the onset that this matter is part-heard, the Land Registrar Bungoma County was stood down on 5/5/2021 in

order to avail documents for land parcel Number Bungoma Municipality/105.

This settles the prayer seeking to compel the Land Registrar to avail the parcel file. The land registrar is yet to conclude his testimony and the reason why he was stood down is to avail the parcel file.

On the prayer that the tenants be asked to pay monthly rent into court, the court notes that the respondent depones that she collects Kshs 3,500/= per month from each of the 2 houses in the plot and the proceeds used to pay land rates and rent. The applicant has not placed sufficient material to disprove this fact. No material has been placed before the court showing the estate is being wasted by the respondent.

The fact that the applicant is in control of 2 other properties of the estate *to wit* E. Bukusu/S. Sanga'alo/865 and E. Bukusu/N.Sang'alo/2193 has not been challenged either.

It must be noted that unless the court is persuaded that the estate is being wasted, the court is not going to invoke its discretion and issue the orders.

This settles the issue of what the respondent has collected from the estate. The applicant has not placed counter material showing that the respondent is collecting money more than Kshs 3,500/= per month from the rental units.

In sum total, having considered the application, I find no merit in the application which is hereby dismissed. This being a family matter, each party shall bear his own costs.

**DATED AT BUNGOMA THIS 11TH DAY OF NOVEMBER, 2021.**

**S. N. RIECHI**

**JUDGE**