



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NUMBER 644 OF 2015

IN THE MATTER OF THE ESTATE OF THE SAITOTI KIDIIS (DECEASED)

RULING

1. The application before court is dated 4/1/2019. Vide the application George Sankale Kidiis seeks orders;

1. Spent.

2. Spent.

3. THAT the family/clan elders of Kidiis be ordered to show the applicant the place on which to construct a residential premises on Land Parcel Number: Narok/Kisiriri/336 the subject suit premises herein pending hearing and determination of the Succession Cause.

4. THAT costs of this application be costs in the course.

2. The application is supported by the affidavit of the applicant and premised on grounds that;

a) **THAT** an application to have this matter transferred from this Honourable Court to High Court of Kenya at Narok has been listed for hearing on 30th April, 2019 for want of jurisdiction.

b) **THAT** the applicant has been living on rental premises since the year 2009 immediately when his parents passed away.

c) **THAT** the applicant is a person a meager means and he is therefore getting a lot of difficulties in paying the rent.

d) **THAT** it is imperative and in the interest of justice that the family or clan of Kidiis be ordered to show the applicant on where to construct a residential premises on the suit premises to overcome the difficulties and misery of living on rental premises until the hearing and final determination of this succession cause.

e) **THAT** it is in the interest of justice that the orders sought for herein be granted.

3. The applicant's case is that he has been living on rental premises since the year 2009 when his parents passed away.

4. He is a person of meagre means and is getting a lot of difficulties in paying rent.

5. He avers that it is in the interest of justice that the family or clan of Kidiis be ordered to show him where to construct residential premises on the suit premises to overcome the difficulties and misery of living on rental premises until the hearing and determination of this cause.

6. The application is opposed and two(2) grounds of opposition have been listed namely;

1. **THAT** the application is premature and an abuse of court process as the issue in the objection in the application for summon for revocation and annulment of grant dated 27th February, 2017 is whether the applicant is a beneficiary to the estate of Saitoti Kidiis (deceased).

2. **THAT** hearing of this matter is scheduled for full hearing on 30th April, 2019 and the applicant should bring all his witness to finalize this matter in earliest.

7. I have had occasion to consider the application, the supporting affidavit and grounds of opposition filed.

8. This court has powers to make such orders as may be necessary for the ends of justice or to prevent abuse of the court process. **Rule 73** of the **Probate and Administration Rules** provides;

“r.73 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.”

9. The court is thus empowered to intervene and make appropriate orders in the interest of justice using its inherent powers even where statute may be silent on remedies.

10. Such power, however, can only be exercised where the remedies sought are legal and directed to known entities capable of being sued to enable enforcement.

11. Secondly, the orders sought must be based on substantiated facts and it must be proved that the same are merited.

12. In our instant suit, the substantive matter pending for hearing is the summons for revocation of grant dated 27/2/2017 lodged by the applicant herein.

13. From a reading of the summons for revocation of grant and the reply thereto, it emerges that the contested issue is whether the applicant is a beneficiary in the estate of Saitoti Kidiis.

14. It follows then, that, until this issue is resolved one way or the other, this court has no power to order the settlement of the applicant on the deceased's estate. As rightly put by the respondent in the grounds of opposition, the application is premature.

15. Notably too, and of great impact to the application, is the fact that the application as drawn is fatally defective. The application is directed against “Family/clan elders of Kidiis”. These are not entities known in law. Against whom would such an order if at all be executed? Any victory on the part of the applicant, if at all, would be by pyrrhic victory.

16. At present, the applicant has not satisfactorily established his right(s) in the estate of the deceased. He must bid his time and prepare to articulate his case at the place and date set for the hearing of this matter.

17. The application fails.

18. I make a finding that the application is fatally defective and that the same is premature as the applicant needs to establish his right(s) over the estate of Saitoti Kidiis.

19. I accordingly dismiss the summons dated 4/1/2019. Costs shall abide the outcome of the summons for revocation of grant.

Dated and Delivered at Nakuru this 7th day of February, 2019.

A. K. NDUNG'U

JUDGE