



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**SUCCESSION CAUSE NO.569 OF 2014**

**IN THE MATTER OF THE MBALANYA OMWAKWE- DECEASED**

**ALICE OWANO MULUSA.....APPLICANT**

**VERSUS**

**ROSALIA OKILA MBALANYA.....RESPONDENT**

**R U L I N G**

1. The applicant herein has filed an application dated 15<sup>th</sup> February, 2019 seeking for orders that:-

1. Spent

2. Spent

3. That the respondent, **Rosalia Okila Mbalanya**, her agents and or personal representatives and or assigns be restrained from developing, constructing, improving, building, charging, selling or interfering in any way with the commercial property, and or any other property lying on that parcel of land known as West **Bunyore/Ebusikhale/242** and or with the said parcel in its entirety pending hearing and determination of the main succession cause herein.

2.The application is premised on the grounds on the face of the application that the respondent has commenced demolition and reconstruction of commercial premises lying on the estate of the deceased herein which properly forms the subject of the this succession cause. That the respondent's action is aimed at defeating the ongoing suit before this court.

3. The application was opposed by the respondent through her replying affidavit. The respondent depones that she is in occupation of part of plot No. Bunyore/Ebusakami/242. That sometimes in February, 2018 they received a notice from Kenya National Highway Authority ordering them to demolish part of the building which was on a road reserve. That they made adjustments to the building as required by the authority. Further that in December, 2013 she had received a statutory notice from the public health department to do certain renovations on the building which she complied with. That failure to comply with the statutory notices would have exposed her to suffering and cause wastage to the estate of the deceased.

4. The respondent did annex to her response a letter from Kenya National Highway Authority that ordered the demotion and the letter from the public Health Department that ordered the renovation.

5. The advocates for the parties **Miss Wilunda** for the applicant and **Mr. Otenyo** for the respondent made oral submissions and reiterated what is stated in the affidavits of their respective clients.

6. A perusal of the court file indicates that a grant of letters of administration intestate was issued to Rebecca Alushula Litunya, Alice Owano Mulusa, Francis A. Mbalanya and Musa Mbalanya on the 7<sup>th</sup> November, 2014. These are the current administrators of the estate of the deceased herein. The respondent is not an administrator of the estate. She has admitted that she has demolished part of the building that forms part of the estate of the deceased. She also did renovations on the building.

7. Only an administrator of an estate has powers to deal with the estate of a deceased person. In this case it is only the administrators of the estate of the deceased who could legally deal with statutory notices from Kenya Highway Authority and Public Health Department. The respondent herein is not an administrator of the estate. She has admitted to demolishing and carrying out renovations on a building belonging to the estate of the deceased without the authority of the administrators of the estate. It is an offence under section 45 of the Law of Succession Act for a person who is not an administrator of an estate to intermeddle in any manner with the estate of a deceased person. The

section states that-

**“1. Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.**

**2. Any person who contravenes the provisions of this section shall-**

**a). be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and**

**b).be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.**

8. In the premises the respondent demolished the estate of the deceased without authority of the administrators of the estate. The act was illegal. It does not matter her good intentions of saving the estate some costs. She ought to have done it with the authority of the administrators of the estate. If the administrators unreasonably denied her the authority she could only do so with the authority of the court.

9. I have noted from the court file that various parties have been intermeddling with the estate of the deceased herein. This will make it difficult to distribute the estate in an equitable manner. The orders sought herein are thereby merited.

The court therefore makes the following orders.

1. The respondent is hereby ordered to maintain the status quo on land parcel **West Bunyore/ Ebushakhale/242** as is of this date pending the hearing and determination of this succession cause.

2. The respondent is hereby restrained as prayed in paragraph 3 of the application dated 15<sup>th</sup> February, 2019 pending the hearing and determination of this succession cause.

Orders accordingly.

Each party to bear its own costs.

**Delivered, dated and signed in open court at Kakamega this 8<sup>th</sup> day of April,2019.**

**J. NJAGI**

**JUDGE**

In the presence of

N/A.....for applicant

Mr. Olwnyo.....for respondent

Applicant.....Absent

Respondent.....Absent

Court Assistant.....George