



**REPUBLIC OF KENYA**

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

**MISC. CIVIL APPLICATION NO. 234 OF 2017**

**EMILY JERUTO.....APPLICANT**

**VERSUS**

**LINET RUNJI.....RESPONDENT**

**RULING**

1. The summons before me is the one filed in the Thika Chief Magistrate's Court on 9<sup>th</sup> March 2017 in **Succession Cause No.82 of 2017 in respect of the estate of Stanley Kiptanui Rop** (the deceased). The summons firstly seeks an injunction to restrain the Respondent **Linet Runji** "from wasting, selling, transferring, subdividing or otherwise dealing with the deceased's properties." The second prayer seeks an order to compel the said Respondent to produce all personal documents, titles to land and allocation certificates "belonging to the deceased"

2. Expressed to be brought under Sections 45, 47 and 94 of the Law of Succession Act and Rules 49 and 73 of the Probate and Administration Rules, the summons is based on the grounds on the face thereon and supporting affidavit of **Emily Jeruto Rop**, the Applicant, who describes herself as the widow of the deceased. The gist thereof is that at the time of his death, the deceased worked and lived at Thika with the Respondent and that following his death, the Respondent took into her possession all the personal documents of the deceased and that she has intermeddled with the estate of the deceased by disposing of some properties.

3. When the application came up for hearing on 25/2/19 the Respondent's counsel was absent. Ms Rashid for the Applicant moved the summons and was supported by Mr. Wangila representing an Interested Party. Perusing the entire record of the lower court, I do not find any affidavit sworn by the Respondent in answer to the instant application, contrary to her assertions on the hearing date. It may well be that her counsel had not filed any response.

4. Nevertheless, having carefully studied the entire record of the lower court file, and in particular, the introduction letter dated 10/1/2017 by the **Chief Chemundu Location, Kapsabet**, the list of assets indicated in the Petitioner's affidavit in support of the Petition filed on 9<sup>th</sup> March 2017, the affidavits of the Respondent filed on 20<sup>th</sup> July 2017, and 20<sup>th</sup> September, 2017, and also that sworn by the Applicant in support of the instant motion, I would make the following observations:

- a) It is evident from the material on record that both the Applicant and Respondent assert to be widows of the deceased.
- b) It is evident that the deceased died while living with the Respondent at Thika.
- c) A large portion of the estate of the deceased comprising land parcels is located in **Chemundu, Baraton, Nandi County**, even though it seems that, there are some landed properties which form part of the estate of the deceased which are located in Thika
- d) There is an anomaly arising from the failure by the registry at Kiambu to open a High Court Succession file in respect of the matter transferred from the subordinate court, the miscellaneous cause having been spent upon the order for the transfer of the lower court cause to this court.

5. In the circumstances, I deem it just to make the following orders:

- a) That the succession cause transferred to this court now be transferred to the High Court of Kenya at Eldoret.
- b) That the application filed on 9<sup>th</sup> March 2017 be placed before the Presiding Judge Eldoret for directions for purposes of fresh hearing on or before 29<sup>th</sup> July, 2019.
- c) That the Respondent be hereby granted leave to file a Replying affidavit thereto within 14 days of today's date.

d) That for the purposes of a), b) and c) above, the High Court registry at Kiambu is directed to open a succession file in respect of the lower court succession file, and to assign it a registration number prior to the transmission of both the miscellaneous application and lower court succession files to the High Court of Kenya at Eldoret. For the avoidance of doubt, both Kiambu **Misc. Civil Application No. 234/17** (spent) and **Thika Succession Cause No. 82 of 2017** are to be housed in the new Succession file.

e) That pending the hearing and determination of the application filed on 9<sup>th</sup> March, 2017, there shall be orders that the status quo respecting the assets of the estate of the deceased shall be maintained. This order shall apply equally to the Applicant, the Respondent and related parties.

**DELIVERED AND SIGNED AT KIAMBU THIS 18<sup>TH</sup> DAY OF JULY 2019**

.....

**C. MEOLI**

**JUDGE**

**In the presence of:**

Ms Rashid for Applicant and holding brief for Mr. Wangila for Interested Party

Mr. Ranja holding brief for Mr. Achach the Respondent

Court Assistant - Nancy