

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAMIRA

SUCCESSION CAUSE NO. 214 OF 2015

PETER ANYONA MOSETI.....APPLICANT

=VRS=

JOSEPHINE BITUTU ANGWENYI...RESPONDENT/ADMINISTRATIX

RULING

Before me is a Notice of Motion filed herein on 21st February, 2019 by Peter Anyona Mosesti, the applicant. The application which is supported by an affidavit of the applicant sworn on 20th February, 2019 seeks to cite the administratrix herein for contempt and to commit her to jail for a period not exceeding six months for violating the order issued by this court on 8th November 2018. It is the applicant's contention that the administratrix has sold a portion of the land the subject of this cause despite this court's order that there shall be no dealings on parcel Nos. West Mugirango/Bosamaro West/2225, 2226 and 2227 whether by the administratrix or the applicant or other registered proprietors pending the hearing and determination of this succession cause. The applicant contends that since the issuance of the order the administratrix has sold a portion of the land to a third party who has embarked on constructing a permanent structure on the land.

The application is vehemently opposed. In her replying affidavit the administratrix shifts blame to the applicant and contends that it was he who sold the impugned portion of the land. She contends that he did so fraudulently long before the orders of this court were issued. She has annexed a copy of the sale agreement between the applicant and the third party as well as a picture of the structure being erected on the land by the said third party.

The application was canvassed by way of written submissions. Mr. Soire, Counsel for the applicant reiterated the applicant's allegation that the administratrix has sold the portion of the land; that her replying affidavit is totally silent about the allegation and that she has not denied knowledge of the existence of the order so she should be cited for contempt for disobeying the order.

On his part, Mr. Ombachi, Counsel for the administratrix submitted that the applicant has not proved the allegation against the administratrix to the standard required to warrant this court to grant the orders sought. Mr. Ombachi submitted that it is the applicant who sold the land before this court issued the orders that he accuses the administratrix of disobeying.

I have carefully considered the application, the grounds thereof, the affidavits, annexures thereto and the rival submissions. I am not persuaded that this application has merit. First of all, it is wrong to allege that the administratrix has said nothing in her replying affidavit about the allegations made by the applicant. She has at paragraph 4 of the replying affidavit denied that she disobeyed the orders. She has even gone beyond that and annexed a purported sale agreement between the applicant and one Job Mongare Ondari in respect of that parcel of land. She has also annexed a copy of an application filed by the "purchaser" in Kisii Chief Magistrate's Court Land Case No. 15 of 2018 in which the "purchaser" lays claim to the parcel of land. The applicant has himself not demonstrated the allegations against the administratrix by way of evidence. This application is clearly an abuse of the process of this court. It is dismissed with costs to the administratrix. The parties are once again reminded of the order of this court issued on 8th November 2018 and the Advocates are cautioned that as officers of this court they have a duty to explain and see to it that their clients obey the orders. It is so ordered.

Signed, dated and delivered at Nyamira this 11th day of July 2019.

E. N. MAINA

JUDGE