



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MARSABIT

SUCCESSION CAUSE NO.1 OF 2019

IN THE ESTATE OF SAID CHUTE LIGA(DECEASED)

HAWO SAID CHUTE

ABDUKADIR MBARAK SAID (suing as administrators of

the estate **OF SAID CHUTE LIGA (DECEASED)**.....**APPLICANT**

VERSUS

NASSIR SAID CHUTE.....**RESPONDENT**

R U L I N G

The application dated 30.10.2019 seeks the following orders:

- 1. That pending hearing and determination of the application herein, the honourable court be pleased to direct the OCS Marsabit to assist the Administrators in undertaking their duties within the estate including service of Court orders to all tenants.***
- 2. That an order of committal and or fine be made against the respondent for disobedience of Court orders as the honourable court shall deem fit.***
- 3. That a mandatory order be made evicting the respondent, his agents and or any persons claiming through him from the houses forming part of the estate of Said Liga Chute.***
- 4. That the respondent be condemned to pay costs.***

The application is supported by the applicants joint affidavit. The respondent filed a replying affidavit sworn on 1st November, 2019.

Mr. Wakoko, Counsel for the applicants, relied on the application and its supporting affidavit. Counsel submitted that the applicants and the respondent are joint administrators appointed by the Court. Parties entered into a consent. The respondent has obeyed the Court orders. The other joint administrators sought a meeting with the respondent for purposes of assessing the estate, well being of the tenants and harmony between the beneficiaries, but the respondent barred the other administrators from serving the court orders to the tenants. He only allowed service to those tenants who are disloyal to the respondent. The respondent is in contempt of Court.

It is further submitted that the respondent lives on plot number 11969/75 located in Marsabit town. The tenants have no ablution block which was demolished by the respondent. The respondent has allocated himself and his children several houses and has been collecting rent from 2003 without accounting for it. The applicants seek to have the respondent evicted from the estate. He has his own house at Majengo where he can relocate to. The respondent is a man of means who can reside in his own property.

Mr. Ouma appeared for the respondent. Counsel contend that the respondent did not threaten anybody. He only tried to enquire about two other purported administrators who are strangers to him. The respondent did not demolish any toilet. The demolition was done by the County Government. Since 2003 the respondent has lived with his children on the land this being a period of over 20 years.

I have read the application and its supporting affidavit together with the replying affidavit. The submissions by respective Counsels are in line with the affidavit of the respective parties. The records shows that parties appeared before the Court on 7.10.2019 and recorded a consent. This led to the appointment of joint administrators. There is no grant issued as the same is yet to be gazetted. I do find that the

application is premature and has been hastily filed partly out of frustrations on the part of the applicants. If the respondent has been living on one of the properties forming part of the estate, for quite some time and he has not been accounting for rent collected, the matter will be heard and shares of each beneficiary shall be determined. The Court can deduct what is due to any beneficiary if it is established that such a beneficiary has already retained monies accruing to the estate.

It is my view and finding that before the cause is fully heard, the court cannot make any decision as to whether a beneficiary should be evicted from the estate or not. Such orders are made when the cause is finalized.

On the issue of service of Court orders, there is a court process server or other court licenced process servers. It is not clear why the applicants wanted to serve the tenants on their own. I do direct that henceforth any document requiring service should be given to the court process server to effect the service.

I do find that the application dated 30.10.2019 lacks merit and the same is dismissed. Costs shall follow outcome of the main cause.

Dated, Signed and Delivered this 4th day of December, 2019

S. CHITEMBWE

JUDGE