



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 9 OF 2018

IN THE MATTER OF THE ESTATE OF SARAH MAITHA BENARD (DECEASED)

DOROTHY KANYUA MIRITI.....PETITIONER

VERSUS

MARGARET KAMBUA.....OBJECTOR

RULING

1. **Margaret Kambua (the objector herein)** filed application dated 8th October 2019 asking for two things; (1) the Court to order removal of Isiolo Township Block 1/269 from the assets of the deceased; and (2) the petitioner to deposit rent and accounts for all income derived from Isiolo Township Block 1/269 commencing October 2019.

2. In support of her application she averred that she is the registered proprietor of **Isiolo Township Block 1/269** hence the property is not free property of the deceased. According to her, any claim of ownership ought to be litigated before the Environment and Land Court. The petitioner has been collecting rent and income from the premises after the demise of the deceased herein and has declined to account for the proceeds.

3. The application was opposed by **Dorothy Kanyua Miriti (the petitioner herein)** vide Replying affidavit dated 25th October 2019 where she averred that the Property in Isiolo Township Block 1/269 belonged to the deceased herein. That the petitioner fraudulently transferred it after the death of the deceased.

4. That the deceased had during his lifetime filed **Isiolo Cmcc No. 6 of 2015 Sarah Maitha vrs Margaret Kambura Mutegi** where she sought to evict the objector from the premises. It was her averment that in the said suit the objector had admitted that the deceased is the registered proprietor of the suit premises.

5. She also averred that the deceased in her will had bequeathed the plot to Anchor Self Help Group. A registered welfare organisation for the benefit of all children who are members of the group. She also stated that she has undertaken development in the premises with the knowledge and blessings of all family members and at no single point has she been asked to render accounts of the deceased estate and failed to do so.

ANALYSIS AND DETERMINATION

6. I have considered the averments of both parties in their respective affidavits and I do find that the issues for determination are; **Whether Isiolo Township Block 1/269 should be removed from the assets of the deceased? Whether the petitioner should render accounts derived from Isiolo Township Block 1/269.**

7. On the first issue for determination I have looked at the records presented by the parties herein and the supporting documents. The certificate of lease attached in support of the objector's application was issued on 4/3/2019. The deceased herein died on 21/2/2018. The title to the suit premises was issued after the demise of the deceased.

8. These facts point to possible intermeddling with the estate of the deceased; something frowned upon by the provisions of Section 45 of the Law of Succession act which provides as follows;

45. No intermeddling with property of deceased person

(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.

9. The objector’s allegations that she considerably developed the property of the deceased during her lifetime hence her bequeath of the property has not been ascertained. The suit in **Isiolo Cmcc No. 6 of 2015 Sarah Maitha vrs Margaret Kambura Mutegi** militates against the argument by the objector, for she categorically admitted that the suit premises belonged to the deceased though she also averred that the deceased was to transfer the plot to her.

10. Couple this with the fact that the deceased sought to evict the objector from the suit premises; this again makes it clear to this court that the property is estate property. Accordingly, the objector’s prayer to have it excluded from the deceased’s properties fails.

11. On whether the petitioner should render accounts on income derived from Isiolo Township Block 1/269 **Section 83 of the Law of Succession Act**; it is clear such is the obligation and duty of personal representatives. **Section 83 (h)** specifically provides as follows;

(h) to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;

12. The objector has stated that the petitioner herein receives rent and income from the estate, thus, it behoves upon her to render accounts of such income and rent proceeds to this Court. I cannot agree more.

13. Accordingly, I direct the petitioner herein to, within 30 days file an accurate account of rental income and proceeds received from estate assets commencing 21st February 2018 to October 2019.

Dated, signed and delivered in open court at Meru this 2nd day of December 2019

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F. GIKONYO

JUDGE

In presence of

Gikonyo for J.G Gitonga for petitioner

Karanja for objector/applicant

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F. GIKONYO

JUDGE