



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 1331 OF 2016**

**IN THE MATTER OF THE ESTATE OF RIYAZ TAJDIN RAHEMTULA DHANJI (DECEASED)**

**SHAMIRA ROYAZ TAJDIN DHANJL.....APPLICANT**

**VERSUS**

**SHAHNAZ AMIN AMERSH.....RESPONDENT/EXECUTOR**

**RULING**

1. The deceased Riyaz Tajdin Rahemtula Dhanji died testate on 30<sup>th</sup> June 2016 at Parklands in Nairobi. Through the Will dated 21<sup>st</sup> May 2013 he appointed his sister Shanaz Amin Amersh (the respondent) as the executor. His (the deceased's) daughter Aleya Riyaz Tajdin Dhanji was named as the sole beneficiary. On 5<sup>th</sup> July 2017 the court granted the respondent letters of administration *ad colligenda bona*, and asked her to apply for full grant within six (6) months. On 27<sup>th</sup> July 2017 she petitioned for probate of the written Will. Aleya Riyaz Tajdin Dhanji filed her objection and petitioned by way of cross-application for grant on 12<sup>th</sup> September 2017. Josephine Kathure Rukaria and Alnoor Ebrahim Kassam each filed response to the petition and cross-petition. The petition and cross-petition have not been heard.

2. The applicant Shamira Riyaz Tajdin Dhanji is the mother of Aleya Riyaz Tajdin Dhanji and states that she is the widow of the deceased. On 8<sup>th</sup> May 2018 she filed this application seeking stay of warrants of attachment and any execution relating to apartment No. 4 on LR No. 209/91/8 on 1<sup>st</sup> Parklands Avenue pending the hearing and determination of the succession cause. She sought that the warrants and any consequential orders relating to the apartment be set aside. What has happened is that the respondent has instructed auctioneers to proclaim the applicant's property in the apartment to recover rent arrears to the tune of Kshs.1,805,000/= that is allegedly owing to the estate. The applicant states that she and her daughter have resided in this apartment for over 20 years. The apartment forms part of the estate of the deceased. They have never paid rent over the property. Her case is that the purported process of proclamation, in the name of seeking to recover unpaid rent, is not only illegal but also an abuse of process, and intended to embarrass, annoy, punish and deprive her of her property. She argued that the respondent's power under the limited grant did not include what she is doing by way of the proclamation.

3. The application was served but did not elicit any response.

4. It is not denied that the applicant and the only named beneficiary of the Will of the deceased reside in this apartment. The apartment is part of the estate of the deceased. The respondent, the executor, cannot purport to act under the limited grant to demand rent from the named beneficiary, or to interfere with her quiet enjoyment of the apartment of the estate.

5. I allow the application and set aside the warrants of attachment, and any process of distress of rent, by the respondent in respect of the apartment No. 4 on LR No. 209/91/8 on 1<sup>st</sup> Parklands Avenue in Nairobi. Costs shall allow the event.

6. I ask that the parties do appear before Judge Achode (Principal Judge) on **15<sup>th</sup> October 2018** to be given directions on the hearing and disposal of the succession matter.

**DATED and DELIVERED at NAIROBI this 9<sup>TH</sup> day of OCTOBER 2018.**

**A.O. MUCHELULE**

**JUDGE**