



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISUMU
SUCCESSION CAUSE NO 632 OF 2011
IN THE MATER OF THE ESTATE OF JOSEPH OTIENO RERU
AND
IN THE APPLCATION FOR OBJECTION BY JUDITH SARAH ADHIAMBO(OBJECTOR)

RULING

By a notice of motion dated 31.1.17 brought under Order 40 (1)(a) and (b) of the Civil Procedure Rules and Sections 1A, 45, 46 and 77 of the Law of Succession Act Cap 60 Laws of Kenya ; the applicant/objector prays for orders that

- a. This matter be certified urgent and serve of the same be dispensed with in the first instance
- b. That the Honourable court be pleased to extend interim orders of injunction issued on 4.10.16
- c. Costs of this application be provided for

The application is based on the grounds among others that

- a. This matter came up for hearing on 26.1.16 when the judge was away
- b. If the orders are not extended, the respondent/petitioner may execute the Certificate of Grant issued to him on 13th July 2016

The application is opposed on the grounds set out in grounds of opposition filed by the respondent on 31st January 2017 in which it is stated that there are no interim orders capable of being extended.

The brief history of this matter is that on 28th September 2016; the applicant filed a notice of motion under certificate of urgency seeking among other orders conservatory orders prohibiting the respondent from alienating, subdividing, selling, transferring and disposing of land parcel number Kisumu/Dago/96 belonging to her late husband JOSEPH OTIENO RERU. On 29th September 2016; the notice of motion was certified urgent and the court granted conservatory orders prohibiting the respondent from alienating, subdividing, selling, transferring and disposing of land parcel number Kisumu/Dago/96 and fixed the matter for mention on 1st November 2016 for directions. When this matter came up for mention on 1st November 2016; Maina J. extended the conservatory orders and fixed the notice of motion for hearing on 26th January 2017. On 26th January 2017; the judge was not sitting and the deputy registrar fixed the application for hearing on 7th March 2017.

It is not disputed that the conservatory orders could not be extended on 26th January 2017 because the court was not sitting. By granting the conservatory orders; the court was prima facie convinced that the

property indispute in this suit is in danger of being wasted, damaged, or alienated. As stated herein above; the fact that the conservatory order was not extended cannot be visited on the applicant.

There is evidence that the applicant has filed **Succession Case No. 609 of 2016** which relates to the same estate that is the subject matter in this suit. I however find no evidence that the applicant is intent on stealing a march on the respondent but that her action is a honest desire to protect her interest in the deceased's estate.

I have considered the provisions of Section 3A of the Civil Procedure Act which provides that:

Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

Denying a party the opportunity to be heard should be the last resort. Under the powers conferred on this court by section 3A of the Civil Procedure Act; this court hereby orders:

i. That the conservatory orders prohibiting the respondent from alienation, subdivision, sale, transfer or disposition of land parcel number Kisumu/Dago/96 issued on 29.9.16 is extended pending the hearing and determination of the notice of motion dated 27th September 2016

ii. Costs shall be in the cause

It is so ordered.

DATED AND DELIVERED THIS 3RD DAY OF FEBRUARY 2017

T. WANJIKU CHERERE

JUDGE

In the presence of: -

CC Felix

Odhambo for the Applicant

Mr. Orengo for the Respondent

T. WANJIKU CHERERE

JUDGE