

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1975 & 2125 OF 2015

IN THE MATTER OF : THE ESTATE OF BERNHARD MARTENS (DECEASED)

RULING

1. The application the subject of this ruling is dated 23rd October 2015 and was filed in **HCSC No. 1975 of 2015**. It seeks injunctive relief with respect to the property known as LR No. 1160/265 (Original No. 1160/138/2) and LR No. 1160/266 (Original No. 1160/138/3) Mbagathi Ridge 4, Karen, Nairobi.
2. When the matter was placed before me on 28th October 2015, as Duty Judge, I certified it urgent and gave directions on its service and hearing on 4th November 2015. On 29th October 2015 I directed the court files relating to **HCSC No. 1975 of 2015** and **HCSC No. 2125 of 2015** be put together as the two related to the same estate.
3. On 4th November 2015 Miss Kariuki for the applicant informed me that she had not served the application on the named respondent as the said respondent resides out of the jurisdiction, and that she would, in separate proceedings, be applying to serve the same by way of substituted service.
4. Ms. Kariuki invited me to grant temporary relief pending hearing *inter partes* of the application. She stated that the applicant had certain rights over the property in question arising from Article 42 of the Constitution, Sections 28 and 93(2) of the Land Registration Act, and Sections 45 and 47 of the Law of Succession Act, which arose from over twenty-five (25) years of marriage to the deceased. She asserted that the said property has been the applicant's matrimonial home for that period. She urged me to make orders to preserve the property.
5. Miss Shaw for the executor did not oppose the application, stating that the executor recognized the claims by the applicant as widow of the deceased. She added that the applicant was one of the beneficiaries named in the will of the deceased.
6. The deceased herein died on 4th June 2015 at Karen, Nairobi. He left a written will executed on 4th November 2011 at Naarden in the Netherlands. Chapter 2 of the said will identified the applicant, Grietje Alberta Van Unen, who is also known as Dr. Margriet Van Unen, as partner of the deceased and one of the beneficiaries under the will. Her residence is described in the will as Mbagathi Ridge 4, Karen, Nairobi, which is the same physical address stated in the application before me.
7. *Prima facie*, without considering the contents of the affidavit in support of the application on their merits, Chapter 2 of the will establishes sufficient interest in the estate by the applicant to warrant orders being granted to secure her occupancy of the subject property pending hearing and disposal of the application herein.
8. I am persuaded to make orders in the following terms:-
 - a. **That the applicant herein shall not be removed from nor her quiet possession and or occupancy of the property described in paragraph 2 of the application dated 23rd October 2015 be disturbed pending the hearing and determination of the said application; and**
 - b. **That the said property shall not be sold, leased, exchanged, charged or in any other**

manner whatsoever alienated or disposed of during the pendency of the application dated 23rd October 2015 or further orders of the court.

9. It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 6TH DAY OF NOVEMBER, 2015.

W. MUSYOKA

JUDGE