



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
SUCCESSION CAUSE NO. 255 OF 1996

**IN THE MATTER OF THE ESTATE OF FREDRICK AYUKU MUKOKO OMOTO
(DECEASED)**

BETWEEN

MARY ROSE MOKUA PETITIONER/RESPONDENT

VERSUS

RABECA MISROSE OMOTOOBJECTOR/APPLICANT

RULING

The application for determination is Summons dated 6th February, 2014. It is brought under Section 26 of Rule 17 and Rule 73 of the Probate and Administration Rules. The Objector Rebecca Misrose Omoto prays for the following orders:-

- 1. That pending confirmation of the grant the Applicant/Objector be granted a reasonable provision as a dependant of the deceased estate to wit that she be allowed to cultivate land parcel Nandi/Kapwarren Settlement Scheme No. 513/64 that constitute the matrimonial home with the deceased.***
- 2. That the Honourable Court do hereby grant the Applicant/Objector interim orders to enter upon and cultivate land parcel Nandi/Kapwarren Settlement Scheme No. 513/64 or Nandi/Kapwarren Settlement Scheme 513/65 as a means to sustain heirs/beneficiary or sustain her family pending the formal hearing and determination of the proceedings arising out of the objection to confirmation of grant herein.***
- 3. That in the premise, I pray that a conservatory Order do issue restraining the said Petitioner from leasing, subletting or in any other manner parting with the subject land pending hearing and determination of our application for interim orders to enter upon and cultivate land parcel Nandi/Kapwarren Scheme Plot No. 513/64 or Nandi/Kapwarren Scheme Plot No. 513/65 pending determination of the proceedings herein.***
- 4. That the Chief Chepkumia Location be authorized to ensure compliance accordingly.***
- 5. Costs of the application be provided for.***

It is premised on the following grounds:-

(i) That the deceased owned both parcels of land Nandi/Kapwarren Settlement Scheme No. 513/64 and Nandi Kapwarren Settlement Scheme 513/65.

(ii) That the Applicant occupied land parcel Nandi/Kapwarren Settlement Scheme No. 513/64.

(iii) That the Respondent's son KIZITO ANYANGU OMOTO using the grant evicted NELSON ASEKA AYUKU and the mother from land parcels Nandi/Kapwarren Settlement Scheme No. 513/64.

(iv) That it is only fair and just that the Applicant be allowed to cultivate at least Plot No. 513/64 or 513/65 Nandi/Kapwarren Settlement Scheme pending hearing and determination of the proceedings.

It is further supported by the affidavit of Rebecca Misrose Omoto, the Applicant herein sworn on 7th February, 2014.

The application is opposed by way of a Replying Affidavit sworn by the Petitioner/Respondent, Mary Rose Mokuia sworn on 14th February, 2014.

The application was disposed of by way of filing written submissions. Those of the Applicant were filed on 13th March, 2014, while of the Respondent were filed 17th March, 2014.

The gist of the application is that the Applicant and her children should be allowed to use and/or cultivate one of the deceased's plots, either Nandi/Kapwarren Settlement Scheme 513/64 or Nandi/Kapwarren Scheme Plot No. 513/65 on ground that she too is entitled to a share of inheritance of the deceased's property.

The grant of representation was issued to the Respondent Mary Rose Mokuia (as the Petitioner) and subsequently confirmed vide a certificate of confirmation of grant dated 21st May, 2012. The Petitioner claimed her right as a widow of the deceased. The Applicant herein thereafter by Summons dated 14th February, 2013 applied for the revocation of the Grant issued and confirmed to the Petitioner. She, too, claims her interest as a widow of the deceased.

Given this scenario, it is my view that the Objector may only be allowed to use the properties registered in the deceased names once the application for revocation of the grant has been determined. This is so because her interest cannot be determined until after evidence of her entitlement is determined in the aforesaid application for revocation of the grant. It is premature at this moment to place her on any of the parcels of land she claims.

Suffice it to say, if she succeeds in the application for revocation of the grant, the court will not be hesitant to accord her and her children their due entitlement.

As regards to prayer 4 of the application, I am equally hesitant to direct that the Petitioner does not lease out or rent the land. What the Applicant failed to disclose to the court is whether, after the confirmation of the grant, the titles have already devolved to the respective heirs. It is thus difficult to direct that the Respondent does not cause the transfer of the said properties to the respective beneficiaries pending the hearing of the application for revocation of the grant.

My advice is that the Objector should move the court with speed for the determination of her application seeking annulment for the grant.

Finally, I note that the application is brought under what the Applicant referred to as Section 26 of Rule 17. Chapter 160 of the Laws of Kenya does not provide for Section 26 of Rule 17. I opine the Applicant was referring to S. 26 of the Law of Succession Act, Cap 160 and Rule 17 of the Probate and Administration Rules.

In the result, having considered the application and the respective submissions, I dismiss the Objector's application dated 6th February, 2014 with no orders as to costs.

DATED and **DELIVERED** at **ELDORET** this 10th day of July, 2014.

G. W. NGENYE - MACHARIA

JUDGE

In the presence of:

Mr. Angu Advocate for the Objector/Applicant

Kipnyekwei holding brief for Onyinkwa for the Petitioner/Respondent