



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
MILIMANI LAW COURTS
ELC CIVIL SUIT NO.209 OF 2018

REBECCA DOLA MIGUDA.....PLAINTIFF

=VERSUS=

MUNYAO KIOKO MANG'ELI

ALI MULWA MANG'ELI

(Being Personal Representatives of

the Estate Dr.Kioko Mang'eli.....DEFENDANTS

RULING.

1. This is a ruling in respect of Notice of Motion dated 11th November 2019 which seeks setting aside the orders of this Court given on 25th July 2018. The application is brought by the Personal representatives of the estate of the late Dr Kioko Mang'eli who was the original Defendant in this suit (Deceased).
2. The Respondent who is the registered owner of the suit properties filed a suit against the deceased. The Respondent also filed an application for injunction seeking to restrain the deceased or his representatives from interfering with the suit properties. The deceased who was duly served did not file any grounds of opposition or replying affidavit. The Court having been satisfied that there was proper service proceeded to allow the application.
3. The Applicants have now come to court seeking to have the orders set aside on the ground that the deceased was not served with the application which resulted in the orders of 25th July 2018. The Applicants contend that the Respondent has threatened to evict the beneficiaries of the deceased from the suit properties months after the orders were given and after the demise of the deceased. The deceased died on 14th March 2019 almost eight months after the orders were given.
4. The Applicants contend that the suit properties comprise the matrimonial home of the deceased which is occupied by his beneficiaries one of whom is a minor and that if they were to be evicted, they will suffer prejudice without being heard.
5. The Applicants' application has been opposed by the Respondent through a replying affidavit sworn on 12th February 2020. The Respondent contends that the Applicants' application is an abuse of the court process. The Respondent states that the Applicants have not produced any document to prove interest in any of the two suit properties and that there is no basis at all for discharge of the injunction orders which had been given by the court on 25th July 2018.
6. I have considered the Applicants' application as well as the opposition to the same by the Respondent. I have also considered the submissions by the Applicants and those of the Respondent. The only issue for determination is whether the orders given on 25th July 2018 should be discharged.
7. The Applicants argue that the deceased was not served. This argument is without basis. Before the injunctive orders were given, the court was satisfied that there was proper service. There was an affidavit of service which was filed showing how the deceased was served. The suit properties were all registered in the name of the Respondent in 2008. When the Respondent moved the court for injunctive orders, she demonstrated prima facie that she was the sole owner of the properties and that is why an injunction was given to protect the properties until conclusion of the suit.
8. In the Applicants' application, the Applicants state that the Respondent is a former wife of the deceased. In their submissions, they state

that the deceased divorced the Respondent sometime in or around 2012 vide divorce cause No.389 of 2012. If this be the case, then the proper forum for the Applicant to lay claim to the suit properties is in the Family Division of the High Court where the issue of acquisition of those properties will be settled. This is where the issue of whether the deceased has a stake in the properties can be determined. Otherwise for now, there is no basis upon which the court can set aside the injunctive orders given on 25th July 2018 . The upshot of this is that I find no merit in the Applicants' application which is hereby dismissed with costs to the Respondent.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 8th day of October 2020.

E.O.OBAGA

JUDGE

In the virtual absence of the parties who had been informed of the time and date of delivery of ruling.

Court Assistant: Hilda

E.O.OBAGA

JUDGE