



REPUBLIC OF KENYA

High Court at Nakuru

Civil Suit 354 of 2012

PAMELA AYIEKO MUYODI APPLICANT/PLAINTIFF

VERSUS

SARAH ATHIENO RESPONDENT/DEFENDANT

RULING

The Notice of Motion dated 12th September 2012 is made pursuant to the provisions of **Order 40 Rule 1(a)** and **Order 51 Rule 1** of the **Civil Procedure Rules**, seeking for orders of injunction. This is in relation of property **No.Nakuru Municipality/Block 1/993 (Langalanga)** where applicant prays that the respondent by herself, her agents, servants, employees or others whatsoever be restrained from entering into, taking possession of, trespassing, charging or in any other manner dealing with the said property pending hearing and determination of the suit.

The basis of this application is that:

- (1) The suit property is the matrimonial home of the applicant and her three minor children, but its records have been secretly altered to read the respondent as the beneficial owner after the death of the applicant's deceased husband.
- (2) The applicant fears that the respondent might dispose off the property and that would result in loss which damages would not adequately take care of.

The matter proceeded exparte as the respondent although served, did not file any response.

In the affidavit supporting the application, applicant deposes that she resides in the said property, being the widow of late ALFRED KESSAH OMBOKO who died on 25th November 2009 as per the annexed death certificate. The deceased was survived by three children whose ages range between 14 years - 3 years. The applicant obtained grant of letters of administration. The respondent is her mother-in-law. According to the applicant, on 23/10/09, a month before her husband's death, the respondent came to Nakuru and ordered her to leave the marriage on pretext that she hated applicant and her children.

Upon the death of applicant's husband death (i.e. Respondent's son), the latter instructed relatives not to allow applicant to see her husband's remains or participate in his burial arrangements. This compelled the applicant to seek and obtain court orders in CMCC No.1415 of 2009 – despite this; the respondent ensured she did not attend the burial by organizing for thugs to physically assault her.

Having barred the applicant from the burial, the Respondent then picked one **EMILY SITEIYAN**

MUTENTEI and declared her the deceased's widow, and together they instituted Nakuru **Succession Cause No.206 of 2010**. The two were issued with Grant of letters of administration and upon applicant learning of this, she filed a protest against the issued grant being confirmed. The cause was heard exparte and the Grant issued to the Respondent and Emily was cancelled.

Subsequently the applicant was issued with grant of letters of administration. Sometime in June 2012 the applicant went to make payments for rates in respect of the property at the Municipal Council of Nakuru, and that is when she learnt that the property did not exist in the Council's records. Eventually, by a letter dated 4th September 2012, the Town Clerk of Municipal Council of Nakuru, informed the applicant that the respondent is the beneficial owner of the suit property. She challenges this, saying the deceased had just bought that property and the respondent was not a dependant, having been in employment in Mombasa for many years, and she retired to comfortably settle at her home in Busia.

It is the applicant's contention that she acquired the suit property jointly with the deceased and she is the one who supervised the construction of the matrimonial home so it would be grossly unjust for the respondent to casually declare herself its owner. The respondent destroyed applicant's matrimonial rural home and declared that the applicant and her children should never step there again. It is her further contention that the secret and fraudulent removal of her late husband's name from the property demonstrates the respondent's intent and resolve to deprive her of the property. Incidentally the applicant was married to the deceased under custom. The applicant does not have documents to demonstrate that her deceased husband owned the house – she has instead annexed utility bills relating to plot No.548 Race Track Central, issued in the deceased's name. In the Succession Cause No.206 of 2010 filed by respondent and Emily Siteiyan, they did not list the property herein as part of the deceased's assets. It was the applicant who later listed the said property. Further, correspondence from the National Housing Corporation dated 14th November 2005 clearly confirmed that the late Kessah Alfred Omboko was the owner of the property; and correspondence from the Municipal Council of Nakuru stated that the respondent was the beneficial owner, having entered into a sale agreement dated 22/10/2009 between the respondent and the deceased. The applicant has by virtue of having obtained letters of administration and the acrimony that exists between her and her mother-in-law, the respondent demonstrated that she has a beneficial interest in the property and is justified in her apprehension that respondent may deal adversely with the property. She is entitled to challenge the purported transfer or sale. She has therefore established a *prima facie* case with probability of success.

This appears to be the home they lived in as demonstrated by payment of utility bills. Since the respondent is now recognised as the owner, it is not far-fetched for the applicant to fear that the respondent could adversely deal with the property in a manner that would be prejudicial to the applicant, including disposing of it to a third party, or renting it out to another person. This would result in the eviction of the applicant and her children and that kind of trauma and set of circumstances would not adequately be compensated by way of damages.

Even if the first two limbs were to fail, it is not contested that applicant and the children are in the house. It is therefore more convenient to preserve the existing status quo by restraining the respondent by herself, servants and/or agents from interfering with the applicant's quiet possession either by trespassing, entering into, taking possession of, leasing out, selling, transferring, charging or in any other manner dealing with the property pending hearing and determination of the suit.

Costs of the application be borne by the respondent.

Delivered and dated this 2nd day of November, 2012 at Nakuru.

**H.A. OMONDI
JUDGE**