



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC CASE NO.186 OF 2018

JAMES ANDREW KHIRRECU.....PLAINTIFF/APPLICANT

=VERSUS=

MONICA MUKUHI KHIRRECU....1ST DEFENDANT/RESPONDENT

RULING

1. The Plaintiff/Applicant is son to the 1st defendant/respondent who is one of the administrators of the estate of the late Lawrence Kimani Khirrecu (deceased). The deceased owned LR No. Nairobi/Block 90/153 (suit property). After the demise of the deceased, the process of succession started and upon confirmation of the grant, the suit property was transmitted to the 1st respondent to hold it during her life time. The 1st respondent in her capacity as one of the administrators commenced the process of selling the suit property so that the money raised from the sale could be used to put up rental houses in Kitengela for the benefit of all the beneficiaries of the estate of the deceased.
2. The applicant filed a notice of motion dated 19th April 2018, in which he seeks injunctive orders restraining the 1st respondent from going on with the intended sale unless it is with the consent of the applicant as one of the beneficiaries . The applicant contends that the applicant is colluding with one of his brothers to sell the suit property with an aim of disinheriting him of his rightful share in the estate.
3. The applicant's application is opposed by the 1st respondent who contends that the suit property which belonged to the deceased was transferred into her name with the consent of all the children of the deceased to avoid any fallout which may occur. The 1st respondent further contends that the intended sale was with consent of the beneficiaries including the applicant who was involved in looking for potential buyers.
4. The 1st respondent states that the idea of selling the suit property was to raise money to put up commercial premises for rental in Kitengela for the benefit of the beneficiaries of the estate of the deceased. The 1st respondent argues that this suit is filed for the sole purpose of disinheriting the rest of the beneficiaries. The 1st respondent further states that the applicant has failed to demonstrate that he will suffer irreparable loss if injunction was not granted.
5. I have considered the applicant's application as well as the opposition to the same by the 1st respondent. This being an application for injunction, the applicant must demonstrate that he has a prima facie case with probability of success and that he will suffer irreparable loss if the injunction is refused .
6. The applicant has filed a supplementary affidavit in which he states that he is not opposed to the sale as long as the proceeds of the sale are put in a joint account where his 1/6th share is guaranteed . This is a case where the 1st respondent has powers to administer the estate of the deceased. The applicant is seeking to stop the 1st respondent from discharging her duties. There is no evidence that the applicant will not be given his share and that he will be excluded from the income which will come from the construction of the proposed commercial buildings at Kitengela.
7. The applicant is trying to dictate on how the 1st respondent should carry out her duties as administratrix of the estate of the deceased. The law of succession is clear on how the administrators should account for the running of the estate of a deceased. The applicant cannot move to another court to try to stifle the running of the estate in this forum. I find that the applicant has not demonstrated that he has a prima facie case with probability of success. I find no merit in this application which is dismissed with costs to the 1st respondent.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 7th day of February 2019.

E.O.OBAGA

JUDGE

In the presence of;-

Mr Aunga for Plaintiff/Applicant

Court Assistant: Hilda

E.O.OBAGA

JUDGE