



REPUBLIC OF KENYA
IN THE ENVIRONMENTAL AND LAND COURT AT NAIROBI
ELC CIVIL SUIT NO. 882 OF 2013

JAMES AGGREY HYAPOLA MICHEAL1ST PLAINTIFF

SAMSON ONYANGO OBIERO (Suing as the

Administrators of the Estate of

ISIAH OKOTH OBIERO).....2ND PLAINTIFF

VERSUS

ROSEMARY IRENE WANGA.....DEFENDANT

RULING

The Plaintiffs filed an application by way of Notice of Motion dated 2nd July 2013 seeking various orders as follows:

1. That a mandatory injunction do issue compelling the Defendant to restore the Plaintiffs to possession of the suit premises pending the hearing and final determination of this suit.
2. That a temporary injunction do issue restraining the Defendant from interfering with the Plaintiffs' access into and out of the suit premises and possession and quiet enjoyment thereof and/or taking any action purported to defeat the Plaintiffs' administration and enjoyment of the suit premises pending the hearing and final determination of this suit.
3. That a temporary injunction do issue restraining the Defendant from demanding rent payments from the tenants of the suit property pending the hearing and final determination of this suit.
4. That in the alternative, this court orders the Defendant to deposit any rental and other profits collected from the suit properties to be deposited with the court, or with a third Party trustee.
5. That the court makes any other order it deems fit in ensuring justice between the parties.

The Plaintiffs' grounds for the application are elaborated upon in the supporting affidavit and further affidavit both sworn by the 1st Plaintiff on 2nd July 2013 and 20th August 2013 respectively. In summary, these are that at all material times, Isaiah Okoth Obiero since deceased, was the registered proprietor of the suit premises herein being property known as Nairobi/Block 62/111 situated at Kibera Fort Jesus in Nairobi. Further, that Florence Lilian Atieno Wanga the wife of the deceased Isaiah Okoth Obiero was appointed as the Administrator of his estate by a Grant of Letters of Administration dated 6th November 2006, in Succession Cause No. H.C 931 of 2006.

The Plaintiffs claim that the said Florence Lilian Atieno Wanga, the wife of the deceased, died on 14th

July 2008, after which the confirmed grant of letters of administration to the estate of Isaiah Okoth Obiero was granted to Samson Onyango Obiero, the 2nd Plaintiff herein, by way of a Certificate of Confirmation of Grant dated 26th July 2012 issued in Succession Cause No. 05 of 2010, in the Principal Magistrate's Court at Maseno. Copies of the said grants were attached to the supporting affidavit

Further, that the schedule to the Certificate of Confirmation of Grant detailed the properties comprising the estate, including the suit premises herein, which property was to wholly devolve to the 2nd Plaintiff herein, as the beneficiary of the estate. However, that since the demise of Florence Lilian Atieno Wanga, the Defendant has, to the exclusion of the Plaintiffs herein, taken possession of, occupied, made use of and derived profit from the suit premises without any colour of right in the said property, and has in the process mismanaged and wasted the said premises.

The Plaintiffs' application was opposed by the Defendant in a replying affidavit she swore on 6th August 2013. She admitted therein that suit premises are registered in the names of the deceased Isaiah Okoth Obiero who died on 25/10/2003, and who was survived by his late wife one Florence Lillian Atieno Wanga who is the Defendant's sister. She states that during their life time, the Deceased husband and wife gave her one of the semi-permanent houses in the suit premises to live in, and that she had lived thereon with her children since 2004 and is a beneficiary of their estate.

Further, that after her sister's death the Plaintiffs' mother agreed together with all her children that the said Plaintiffs' mother and the Defendant be appointed administrators of the deceased's estate. That an application was subsequently made at the High Court in Nairobi and a grant was issued on 17th February 2009 in Nairobi High Court Succession Cause No. 2336 of 2008, a copy of which was attached. The Defendant then proceeded to give an account of the money she collects from the suit premises.

The parties were directed to file written submissions which I shall not consider in this ruling, as I note from the pleadings herein that the dispute herein is essentially a succession dispute. I also note from the Plaintiff filed herein dated 2nd July 2013 that the Plaintiffs are seeking a declaration the suit premises forms part of the estate of Isaiah Okoth Obiero and not of Florence Lilian Atieno Wanga. It is also apparent from the pleadings filed herein that there are two separate grants of representation issued with respect to the suit property, and that there is a pending succession suit touching on the suit property.

I have reached the decision not to proceed with this matter because intestate and testamentary succession to, and the administration of estates of deceased persons are governed by the Law of Succession Act, which under section 47 gives the High Court jurisdiction to deal with any matter arising under the Act. The High Court in this regard therefore has concurrent jurisdiction to hear and determine disputes of succession relating to land.

I also refer to the **Practice Directions on Proceedings relating to the Environment and the use and Occupation of, and Title to Land** issued by the Chief Justice dated 9th November 2012 and published in Gazette Notice No. 16268, which direct in Practice Direction No. 5 that all cases under the Law of Succession Act shall continue to be filed and heard by the High Court or the Magistrates Courts of competent jurisdiction.

I therefore decline to grant the orders sought in the Plaintiffs' Notice of Motion dated 2nd July 2013 for these reasons. I accordingly stay this suit pursuant to the provisions of section 6 of the Civil Procedure Act and direct the Plaintiffs and Defendant to move the relevant High Court in which the succession cause concerning the suit premises is pending, to resolve and determine the dispute herein. The costs of the Plaintiffs' Notice of Motion dated 26th October 2012 shall be in the cause

Orders accordingly.

Dated, signed and delivered in open court at Nairobi this ____28th____ day of ____January____, 2014.

P. NYAMWEYA

JUDGE