



In re Estate of Stanley Manyara Murithi (Deceased) (Civil Appeal E027 of 2023) [2023] KEHC 21129 (KLR) (27 July 2023) (Ruling)

Neutral citation: [2023] KEHC 21129 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E027 OF 2023
TW CHERERE, J
JULY 27, 2023**

BETWEEN

ROSEMARY GATIMBI M'NCHEBERE APPLICANT

AND

HELLEN NTHIORI MANYARA 1ST RESPONDENT

ELIAS MUTUGI MANYARA 2ND RESPONDENT

RULING

Background

1. By a judgment dated January 25, 2023, the trial court issued the following orders:
 - a. Parcel No. Isiolo/Pesa/9 be and is hereby granted to the Objector
 - b. ¼ portion of LR. Nyaki/Giaki/Nkabune/804 more so being the portion the portion where the objector has settled be given to the objector, the balance thereof shall be divided to the other beneficiaries equally
 - c.
 - d.
2. Applicant moved the court asking for injunction to restrain the Respondent from evicting her and destroying her crops on LR. Nyaki/Giaki/Nkabune/804 (suit land). Annexed to the supporting affidavit sworn by applicant on March 14, 2023 are photographs of the destructions alluded to in this application.
3. By her affidavit sworn on April 11, 2023, Hellen Nthiori Manyara (1st respondent) denies that Applicant is in occupation of the suit land or than any of her properties have been destroyed and that the pictures filed by the applicant relate to an old granary that was pulled down.



Analysis and Determination

4. I have considered the application in the light of the affidavits on record and annexures thereto.
5. Respondent has denied that Applicant is in occupation of the suit land or that any of her properties have been destroyed and stated that the pictures filed by the Applicant relate to an old granary that was pulled down. Order 6 Rule 9 (1) of the *Civil Procedure Rules* which is applicable to these proceedings states that:

“ Subject to sub-rule (4), any allegation of fact made by a party in his pleading shall be deemed to be admitted by the opposite party unless it is traversed by that party in his pleading or a joinder of issue under rule 10 operates as a denial of it.”
6. Applicant having not controverted any of the allegations of fact pleaded by the 1st respondent, i find that applicant has failed to demonstrate that respondents have either evicted or attempted to evict her from the suit land or destroyed any of her properties.
7. For the reasons that I have outlined hereinabove, the summons dated March 14, 2023 is found to be unmerited and it is dismissed with costs to the respondents. The interim orders issued on March 15, 2023 are discharged.

DELIVERED IN MERU THIS 27TH DAY OF JULY 2023.

WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistant - Mr. Kinoti

For Applicant - Mr. Mwirigi for Elijah K. Ogoti & Co. Advocates

For Respondents - Mr. Mokuu for Mokuu Obiria & Associates

