



REPUBLIC OF KENYA



**In re Estate of Stanley Mugambi Muketha (Deceased) (Succession Cause 361 of 2009) [2022] KEHC 14477 (KLR) (27 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14477 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT MERU**

**SUCCESSION CAUSE 361 OF 2009**

**TW CHERERE, J**

**OCTOBER 27, 2022**

**IN THE MATTER OF ESTATE OF STANLEY MUGAMBI MUKETHA (DECEASED)**

**BETWEEN**

**EVANGELINE NKATHA MUGAMBI ..... APPLICANT**

**AND**

**MORRIS MUTEMBEI MUGAMBI ..... RESPONDENT**

**RULING**

**Background**

1. Letters of administration Intestate were issued on 05<sup>th</sup> March, 2019 to the parties herein in their capacities as daughter and son to the deceased respectively. To date, the estate has not been distributed. An application for confirmation dated 02<sup>nd</sup> April, 2019 remains undetermined after Applicant filed a protest on 08<sup>th</sup> July, 2019.
2. By summons dated 21<sup>st</sup> April, 2022 supported by Applicant's affidavit sworn on even date, Applicant accused the Respondent of intermeddling with deceased's estate comprised in LR. Nkuene/uruku/1020 by way of cutting down tea bushes and seeks an order restraining him from entering, selling or interfering with the said asset until the determination of the suit herein. Annexed to the affidavit are photos of the destroyed tea bushes and an OB by which a complainant was made against the Respondent to Nkubu Police Station on 23<sup>rd</sup> March, 2022.
3. By his replying affidavit sworn on 07<sup>th</sup> June, 2022, Respondent denied the Applicant's claim and contended that Applicant sold a portion of LR. Nkuene/uruku/1021 and engaged surveyors who excised the sold land and a road and boundary which allegations were denied by the Applicant vide her supplementary affidavit sworn on 08<sup>th</sup> June, 2022.



4. From the parties' affidavits and annexures thereto and written submissions, it is not disputed that some tea bushes have been cut out. Whereas the Applicant accused Respondent of cutting down the said tea bushes, Respondent on the other hand states that the tea bushes were cut by surveyors instructed by the Applicant to excise a portion of LR. Nkuene/uruku/1021 that she had sold and a road and boundary in respect thereof.
5. Clearly, there evidence on record is the Applicant's word as against the Respondent's word. I therefore find that it has not been demonstrated on a balance of probability that it was the Respondent that cut down the tea bushes in issue.
6. Consequently, I find that Applicant has not met the test in *Giella vs Cassman Brown* [1973] EA 358 and summons dated 21<sup>st</sup> April, 2022 is therefore disallowed.
7. Finally, it is on record that the estate of the deceased remains undistributed since letters of administration were issued to the administrators herein on 13<sup>th</sup> March, 2019.
8. It is also apparent that even after the grant dated 15<sup>th</sup> March, 2013 distributing the estate was revoked by an order dated 05<sup>th</sup> March, 2019, the Administrators have lived under a mistaken believe that they can deal with the estate of the deceased as they wish instead of distributing it to the rightful heirs.
9. In order to safeguard the estate from wastage, this court hereby invokes its inherent jurisdiction under Rule 73 of the Probate and Administration Rules provides that: - "Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court" and proceeds to make the following orders:
  1. Any and all subdivisions that arise from deceased's assets comprised in L.R.Nkuene/Uruku/863(0.81HA),L.R.Nkuene/Uruku/1714(0.63HA),L.R.Nkuene/Uruku/1020(2.27HA), L.R. Nkuene/Uruku/1711(0.101HA), L.R. Ngobit/Supuko Block 5 /359 (0.2813HA), L.R. Ngobit/Supuko Block 5 /339 (0.9690HA), L.R. Ngobit/Supuko Block 5 /764(7.583HA), L.R. Ngobit/Supuko Block 5 /764(7.583HA) be and are hereby cancelled
  2. L.R.Nkuene/Uruku/863(0.81HA),L.R.Nkuene/Uruku/1714(0.63HA),L.R.Nkuene/Uruku/1020(2.27HA), L.R. Nkuene/Uruku/1711(0.101HA), L.R. Ngobit/Supuko Block 5 /359 (0.2813HA), L.R. Ngobit/Supuko Block 5 /339 (0.9690HA), L.R. Ngobit/Supuko Block 5 /764(7.583HA), L.R. Ngobit/Supuko Block 5 /764(7.583HA) shall be restored to the name of the deceased
  3. Mention on 15<sup>th</sup> December, 2022 to confirm compliance with orders issued on 29<sup>th</sup> September, 2021 and to take a date for hearing of the protest filed by the Applicant on 08<sup>th</sup> July, 2019

**DELIVERED AT MERU THIS 27<sup>th</sup> DAY OF OCTOBER 2022**

**T. W. CHERERE**

**JUDGE**

**Appearances**

Court Assistant - Kinoti

For Applicant - Mr.Kariuki for Mithega & Advocates

For Respondent - Mr. Muthuri for Muthuri & Co. Advocates

