



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 617 OF 1995

IN THE MATTER OF THE ESTATE OF DANIEL MURAMBI AMIANI (DECEASED)

ZIPPORAH AMIANI.....1ST PETITIONER/DEFENDANT

GLADYS INYANJE.....2ND PETITIONER/DEFENDANT

VERSUS

EDWARD AMIANI.....OBJECTOR/PLAINTIFF

AND

CENTRICK MURAMBI MAGOTSWE...1ST INTERESTED PARTY/APPLICANT

IAN KONZERANI MAGOTSWE.....2ND INTERESTED PARTY/APPLICANT

AND

HENRY AMIANI MURAMBI.....RESPONDENT

RULING

1. This court on the 27th June, 2018 delivered a ruling in which it allocated the house of the late **Esther Khayanje Amiani** a portion of land measuring 3.85 Ha out of the estate of the deceased herein. **Henry Amiani Murambi** was allocated 1.06 Ha.

2. The interested parties/applicants herein have filed an application dated 12th July, 2018 stating that they are grandchildren of the late Esther Khayanje Amiani. That their father was a son of the late Esther Amiani. That they are occupying a portion of land that was allocated to their father. That Henry Amiani has encroached on to the said portion and is cultivating it by force. That the said encroachment is contrary to this court's ruling delivered on 27/6/2018. They are seeking for injunctive orders against the said Henry Amiani and that they be enjoined in this cause. They are further seeking that the orders of the court issued by the ruling of 27/6/2018 be reviewed and or set aside with a view to identifying the rightful share of the applicants.

3. The application was opposed by Henry Amiani who deponed an affidavit denying that he has encroached into the interested parties' portion of land.

4. **Mr. Osango**, advocate for the applicants has sought that the application be heard by way of oral evidence. **Mr. Mukavale** for petitioners was on the other hand of the view that there is no need to call oral evidence. That the question is whether the applicants were provided for. That the application should proceed by way of oral arguments.

5. **Miss Andia** for one of the parties supported the position taken by Mr. Mukavale as objection proceedings have been heard and concluded.

6. I have considered the submissions by the advocates for the parties. The applicants are grandchildren of the late Esther Khayanje Amiani. The house of the late Esther Khayanje Amiani was allocated 3.85 Ha out of the estate of the deceased herein. The question then is whether the applicants were therefore provided for through their grandmother. For the court to order for oral evidence to be called the applicants must demonstrate that there is a triable issue. The applicants have not stated whether their grandmother was entitled to anything else over and above what was allocated to her house. There is no triable issue disclosed in the application. The application by Mr. Osango that the matter proceeds by way of oral evidence is declined. It is ordered that the application proceeds by way of oral arguments.

Delivered, dated and signed in open court at Kakamega this 11th day of March, 2020.

J. N. NJAGI

JUDGE

In the presence of:

No appearance for Interested Parties/Applicants

Mr. Indimuli for Petitioners & Respondent

..... for Objector

Parties:

Interested Parties/Applicants - Absent

Petitioners – Absent

Respondent - Present

Objector - Absent

Court Assistant - Polycap

30 days right of appeal.