



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

(CORAM: CHERERE-J)

SUCCESSION CAUSE NO. 497 OF 2009

IN THE MATTER OF THE ESTATE OF M'ITHABU M'RIMBITU(DECEASED)

BETWEEN

MARGARET MUKOMUNENE M'ITHABU.....1ST PETITIONER/APPLICANT

JAMES MWIRIGI M'ITHABU.....2ND PETITIONER/APPLICANT

AND

ESTHER NTIRINGA MUTWIRI.....OBJECTOR/RESPONDENT

RULING

1. By a chamber summons dated 02nd June, 2013 filed on 11th June, 2013, the Objector/Respondent sought orders:

1) That this Honourable Court be pleased to issue an order of inhibition to be registered against LR. NYAKI/GIAKI Nos. 653, 3394, 3394, 3395, 3396, 3397, 3398, 3399 and 3400 inhibiting theregistration of any dealings on the aforementioned parcels of land pending the hearing and determination of this application interpartes and/or until further orders of the court

2) That an order of temporary injunction be issued restraining the Petitioners, their agents, servants, employees, assigns and/or anybody acting at their behest from evicting the Applicant from LR. LR. NYAKI/GIAKI/653 and interfering with her peaceful occupation, cultivation and enjoyment of the said parcel of land pending hearing and determination of this application interpartes and/or until further orders of the court

3) This Honourable Court be pleased to revoke and/or annul the grant issued in this cause and the resultant certificate of confirmed grant issued to the Petitioners

4) Costs be provided for

2. The Petitioners/Applicants by the summons dated 13th October, 2020 seek orders:

1) That the application dated 02.06.2023 be dismissed for want of prosecution

2) That the orders of inhibition issued and registered against LR. NYAKI/GIAKI Nos. 653, 3394, 3394, 3395, 3396, 3397, 3398, 3399 and 3400 be lifted forthwith

3) That the temporary injunction issued and registered against LR. NYAKI/GIAKI Nos. 653, 3394, 3394, 3395, 3396, 3397, 3398, 3399 and 3400 be cancelled forthwith

3. I have considered the Petitioners/Applicants summons dated 13th October, 2020 in the light of the supporting affidavit sworn by the Petitioners/Applicants on 13th October, 2020 and I have deduced the issues for determination as follows:

Whether the application dated 02.06.2013 ought to be dismissed for want of prosecution

4. The court record demonstrates that the Objector/Respondent's Application dated 02.06.2013 was disposed off by a Ruling dated 02nd

August, 2018 in which the court allowed the application and annulled the grant issued to the Petitioners/Applicants and also the subdivision of **LR. NYAKI/GIAKI/653**.

Whether the orders of inhibition issued and registered against LR. NYAKI/GIAKI Nos. 653, 3394, 3394, 3395, 3396, 3397, 3398, 3399 and 3400 should be lifted

5. No material has been placed before the court to justify the lifting of orders of inhibition confirmed by the court in its ruling dated 02nd August, 2018.

Whether the temporary injunction issued and registered against LR. NYAKI/GIAKI Nos. 653, 3394, 3394, 3395, 3396, 3397, 3398, 3399 and 3400 be cancelled

6. Similarly, the Petitioners/Applicants have not satisfied the court that there are any grounds for lifting the temporary injunction confirmed by the court in its ruling dated 02nd August, 2018.

7. Further to the foregoing, it is apparent that since the revocation of the grant over 2 years ago, the Petitioners/Applicants have not moved the court to distribute the deceased's estate which comprises of **LR. NYAKI/GIAKI/653** which the Respondent has laid a claim in her capacity as daughter of the deceased.

8. Having considered the issues raised in this application, the orders which commends itself to me and which I hereby are as follows:

1) The summons dated 13th October, 2020 has no merit and it is dismissed

2) The Petitioners/Applicants are by this ruling given notice under section 73 of the Law of Succession Act Cap 160 Laws of Kenya that should they fail to apply for confirmation of the grant within 30 days' from today's date, this court will be at liberty to revoke the Letters of Administration issued to them on 26th January, 2010

DATED AT MERU THIS 14th DAY OF December 2020

T. W. CHERERE

JUDGE

Court assistant

- Morris Kinoti

For Petitioners/Applicants

- Mr. Muriira for Mwenda, Mwarania, Akalu

& Co. Advocates

For Objector/Respondent

- N/A