



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITUI**

**SUCCESSION CAUSE NO. 2 OF 2017**

**IN THE MATTER OF THE ESTATE OF JUMA KAMINZA KILUMBI DECEASED)**

**AND**

**IN THE MATTER OF MIRIAM KAELE KAMINZA THE DECEASED ADMINISTRATOR**

**RUKIA ABDALLAH.....CITOR/APPLICANT**

**VERSUS**

**ZUHURA JUMA KAMINZA.....1<sup>ST</sup> CITEE/RESPONDENT**

**REHEMA JUMA KAMINZA.....2<sup>ND</sup> CITEE/RESPONDENT**

**HALIMA JUMA KAMINZA.....3<sup>RD</sup> CITEE/RESPONDENT**

**MUSA JUMA KAMINZA.....4<sup>TH</sup> CITEE/RESPONDENT**

**AND**

**MARY NYAMBURA MAINA.....1<sup>ST</sup> INTERESTED PARTY**

**WAZIRI YUSUF.....2<sup>ND</sup> INTERESTED PARTY**

**TAWFIQ JUMA.....3<sup>RD</sup> INTERESTED PARTY**

**RULING**

1. **Rukia Abdallah** by way of Summons seeks preservation of properties parcel numbers **Kyangwithya/Kaveta/1358, 1365, 1366, 1368, 1370, 1371, 1398, 1820, 1821 & 1822** products of subdivision of **Kyangwithya/Kaveta/303** by issuance of temporary orders blocking, barring, prohibiting and/or inhibiting any registration of any transaction and/or dealings of whatsoever kind and/or nature against the titles pending hearing of the Application for revocation and annulment of the grant.

2. The Application is supported by an affidavit deposed by the Applicant where she avers that she filed an Application to annul the grant of Letters of Administration made on **24<sup>th</sup> February, 2009**, to **Mariam Kaele Kaminza**, her mother-in-law now Deceased. On **22<sup>nd</sup> March, 2017** she filed an Application citing the Respondents to either apply or accept to be appointed the Administrators or be substituted as the Respondents in the Application for revocation and/or annulment and/or show cause why the above-stated Certificate of Grant should not be nullified forthwith.

3. That she was excluded from the Estate although they knew that she was a wife to her Deceased son, **Abdallah Juma Kaminza**; she is entitled to the share of her late husband, she lodged a caution on learning of the subdivision which was removed. Mysteriously and without notice on **5<sup>th</sup> April, 2018** while the Application was pending in Court; the portion she occupies was transferred to **Rehema Juma Kaminza** who has subdivided the portion into several other units namely, **1820, 1821** and **1822** for purposes of selling. **Parcel No. 1821** has already been sold to **Waziri Yusuf**; **1820** to **Mary Nyambura Maina** and **1822** to **Tawfiq Juma**, all Interested Parties, an act that has left her displaced.

4. That the Interested Parties have threatened to start construction on the land, to demolish her homestead an act that will render her and the children homeless.

5. The Application is unopposed.

6. This Court has been asked to grant conservatory orders. Therefore, I must consider whether:

(i) The Applicant's Application has a probability of succeeding.

(ii) She will suffer irreparable loss that cannot be compensated by damages if the orders sought are not granted.

(iii) In case of any doubt arising the matter can be determined on a balance of probabilities (**Also see Giella vs. Cassmanbrown Co. Ltd (1973) EA 358.**)

7. In the case of **American Cyanamid vs. Ethicon Limited (1975) AC 396** it was stated that:

***“If there is no prima facie case on the point essential to entitle the plaintiff to complain of the defendant's proposed activities, that is the end of any claim to interlocutory relief.”***

8. In the case of **Mrao Ltd vs. First American Bank of Kenya and 2 Others (2003) KLR 125**, it was stated thus:

***“A prima facie case in a Civil Case include but is not confined to a “genuine or arguable” case. It is a case which on the material presented to the court, a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the applicant's case upon trial. That is clearly a standard, which is higher than an arguable case.”***

9. It has been stated and not controverted that the Applicant was excluded from the Estate of the Deceased **Juma Kaminza Kilumbi** her father-in-law to which **Mariam Kaele Kaminza** her mother-in-law and mother of her husband **Abdallah Juma Kaminza** (now deceased) was the Administratrix. I have perused the affidavit in support of the Petition for Letters of Administration intestate. The name **Abdallah Juma Kaminza** appears as one of the heirs though deceased. The Certificate of Confirmation of Grant does not have his name. In the premises this case is arguable. This is a case where damages cannot adequately compensate the Applicant if orders sought are not granted.

10. In the premises, I do issue temporary orders in preservation of **Kyangwithya/Kaveta/1358, 1365, 1366, 1368, 1370, 1371, 1398, 1820, 1821 & 1822** (formerly **Kyangwithya/Kaveta/303**) as prayed pending hearing of the Application for revocation and annulment of the grant.

11. Costs of the Application shall be in the cause.

12. It is so ordered.

**Dated, Signed and Delivered at Kitui this 25<sup>th</sup> day of April, 2019.**

**L. N. MUTENDE**

**JUDGE**