



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

PROBATE & ADMINISTRATION NO. 367 OF 2014

IN THE MATTER OF THE ESTATE OF: PIO MUSEBE & WESONGA MUSEBE NAMUGINADECEASED

BETWEEN

IDDI OKAYANA KEYA

MIRIAM WESONGA AKUMU

GETRUDE WESONGA

HUSSEIN SAIDI WESONGA.....PETITIONERS/ APPLICANTS

AND

MILTON OKWAYO.....OBJECTOR/RESPONDENT

RULING

1. The applicants herein moved the court by way of Notice of Motion dated 25th January 2018 under section 3A and under Order 40 Rule 1,35,7 (sic) CAP. 21 Laws of Kenya. They are seeking the following orders:

a. That this honourable court do issue a temporary injunction against the respondent in dealing whatsoever with land parcel number **MARACH/BUJUMBA/382**.

b. That the costs be borne by the applicants.

2. The application is premised on the following grounds:

a. That the applicant is the son to **Wesonga Musebe Namugina** who was the brother to **P10 Musebe** both deceased who had a joint title deed on the above captioned parcel **MARACH/BUJUMBA/382** on equal share which parcel is an ancestral land.

b. That the Respondent/Defendant has illegally encroached on the above parcel of land knowing very well that the suit is still pending in court.

c. That the applicant wants to have the matter finalized in court before any progress takes off on the particular land.

3. The application was opposed on the following grounds:

a. That the cause herein is irregular.

b. That the orders are sought in the wrong forum.

c. That this court is handicapped in determining the application without all the facts being heard.

4. It is trite law that unless some provisions of the Civil Procedure Act are specifically imported into the Law of Succession Act, they are inapplicable. In the case of **Priscilla Vugutsa Kamaliki vs. Mary Runyani Ochieng [2016] eKLR** where similar Order and section of

Civil Procedure Act, had been cited, Sitati J. observed:

It is worth noting that the Law of Succession Act is a self-contained Act and provisions of the Civil Procedure Act, unless specifically imported into it are not applicable. A look at Rule 63 of the Law of Succession Act reveals that the provisions under which the present application is brought are not some of the provisions imported into the Law of Succession Act. What this means therefore is that the instant application is incompetent for want of form and is therefore fit for striking out.

The instant application will suffer the same fate and be struck out with costs to the respondent.

DELIVERED and SIGNED at BUSIA this 18th day of December, 2019

KIARIE WAWERU KIARIE

JUDGE