



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 447 OF 2014**

**IN THE MATTER OF THE ESTATE OF ELIZABETH NCORORO ISAIAH - DECEASED**

**ISAIAH NTONG'ONDU .....PETITIONER/1<sup>ST</sup> RESPONDENT**

**ZABERIO MUTURIA M'ITUIRI...INTERESTED PARTY/2<sup>ND</sup> RESPONDENT**

**VS**

**HENRY GITUMA EBUTHANIA.....1<sup>ST</sup> OBJECTOR/APPLICANT**

**EZEKIEL LILLI M'MAILUTHA.....2<sup>ND</sup> OBJECTOR/APPLICANT**

**RULING**

Application dated 12<sup>th</sup> October 2016 is due for determination and parties consented that same be disposed of by way of written submissions.

The application sought that the court issues orders of inhibition against L.R. No. Njia/Liburu/236 pending hearing and determination of the application of revocation of grant of Letters of Administration to Isaiah Ntong'ond Paul.

The objectors/Applicants also sought that the court issues temporary orders of injunction restraining the Petitioner/Respondent, his agents, Purchasers from entering, building, erecting, constructing, trespassing, further sub division or transferring and/or in any way whatsoever interfering with parcel No. L.R. Njia/Liburu/236 pending results of Meru Environment & Land court No. 107 of 2015. Objector also sought for leave to file objection/ protest out of time. Objectors further sought for an order of the court cancelling transfer and subdivision to unit Njia/Liburu/151 and/or any other parcel of land excised therefrom and restore pending Meru E & L CMCC No. 107 of 2015.

The grounds on face of the application are that the succession cause was filed secretly and that the petitioner has subdivided L.R. No. Njia/Liburu/236 and sold it to 3<sup>rd</sup> party pending determination of E & L CMCC No. 107/15 and the 3<sup>rd</sup> party is putting up a building materials in preparation for building and also erected barbed wire. It was also another ground that the grant was obtained fraudulently by making a false statement and/or by concealment of material facts to the court. Henry Gituma Ebuthania swore an affidavit in support of the application.

In further supplementary affidavit of the objector Henry Gituma sworn 30<sup>th</sup> January 2018 he avers that the administrator didn't inform court during confirmation that dispute over parcel No. Njia/Liburu/236 was pending before E&L Court Case No. 107 of 2015 and yet he was the 1<sup>st</sup> defendant. He argued that such non disclosure is fatal to the confirmation of grant which consequently be revoked.

I have considered the Objectors application and find that the right forum for them to canvas the claims as to ownership of L.R. Njia/Liburu/236 is the Environment & Land court where they have rightly filed a concurrent claim No. 107 of 2015 subsequent to the institution of this succession cause. The objectors are not beneficiaries to the estate of the deceased and the Administrator had no obligation to seek their consent before petitioning the court for grant of Letters of Administration to the estate of the deceased.

There was also no application by the objectors either in the succession cause or in the E&LC No. 107 of 2015 for stay of the proceedings in succession cause pending determination of the matter in E&LC No. 107 of 2015.

The objection dated 12<sup>th</sup> October 2016 is therefore dismissed as this court doesn't have jurisdiction to deal with dispute over ownership of land. The parcel of land No. Njia/Liburu/236 is evidenced as registered in the name of the deceased and therefore rightly included in the inventory of assets comprising the estate.

Costs of the application will go to the Respondents.

**HON. A.ONG'INJO**

**JUDGE**

**RULING SIGNED, DELIVERED AND DATED THIS 17TH**

**DAY OF MAY 2018.**

**In the presence of:-**

Mr Ngunjiri Advocate for Respondents/Petitioner/Interested Party. Mrs Ntarangui Advocate holding brief for Kiogora Mugambi Advocate for Appellant.

**Mr Ngunjiri Advocate**

I pray a copy of the ruling.

**Order**

Certified copy of ruling to be supplied to the counsel upon paying copying charges.

**HON. A.ONG'INJO**

**JUDGE**