



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**SUCCESSION CAUSE NO. 125 OF 1989**

**IN THE MATTER OF THE ESTATE OF M' IRWARE MUKIRA (DECEASED)**

**RUTH NKINA IRWARE.....PETITIONER**

**Versus**

**CECELIA KARRURU NGAYU.....1<sup>ST</sup> RESPONDENT**

**ROSE KANANU IRWARE.....2<sup>ND</sup> RESPONDENT**

**RULING**

[1] Before me is a Chamber Summons filed in court on 13<sup>th</sup> March 2014 in which the Applicant seeks the following orders:

1. ....spent
2. The honourable court be pleased to grant an order of temporary injunction restraining the Respondents from continuing to illegally occupy, farm on, build on, lease, sell remain on and o in any other way utilize L.R Nyaki/Giaki/1213 pending hearing and determination of the application inter partes.
3. An order of inhibition be registered against titles of L.R Nyaki/Giaki/1212 and LR Nyaki/Giaki 1213 pending further order of the court.
4. The Respondents be committed to civil jail for such period (not exceeding six months as may to the honourable be pleasing for disobeying and contravening the grant made and confirmed by the honourable court on 9<sup>th</sup> June 2008.
5. The honourable court be pleased to order immediate cancellation of the Respondents registration as joint proprietors to L.R Nyaki/Giaki 1212 and LR Nyaki/Giaki/1213 and further to direct that the two parcels be reverted and registered to the applicant's names as sole proprietor pursuant to the grant of this court dated 9<sup>th</sup> June 2008.
6. Subject to prayer (d) being granted –
  - (i) the Deputy Registrar Meru Law Courts be ordered and or directed to sign all the transfer documents for and on behalf of the respondents for the purpose of expeditious

**transfer of LR Nyaki/Giaki/1212 and LR Nyaki/Giaki 1213 to the sole name of the applicant.**

**(ii) The Land Registrar Meru/Imenti North be ordered to dispense with production of the title deeds in respect to LR Nyaki/.Giaki 1212 and 1213 currently in possession of the respondents and to transfer and register the two parcels to the applicant as sole proprietor.**

**(iii) The honourable court do make any other and further appropriate orders for the purpose of enforcement, realization and actualization of the grant herein.**

**(iv) The Respondents do meet the costs of the application.**

Applicant's gravamen

[2] In this application, the Applicant is saying that the Respondents have contravened the Grant as was confirmed by court, illegally transferred and took possession of the Applicant's share being LR Nyaki/Giaki/1212 and 1213. They have even denied the applicant access thereto.

[3] In a nutshell, the Applicant's case is that by a confirmed Grant dated 3<sup>rd</sup> November 2004, the deceased estate was distributed among the beneficiaries and she was inter alia given L.R Nyaki/.Giaki 1212 and 1213. The original Grant was subsequently rectified on 20<sup>th</sup> May 2008 but the said rectification did not affect her share in the said parcels of land. She stated that she had never or at all gifted and or transferred any of the two parcels to the Respondents herein.

[4] The Applicant submitted in support of her application but emphasized that, having been appointed the Legal Administrator of the deceased estate and the two parcels having been settled to her, it was obviously within her own province to exercise discretion on any dealings thereof. She argued that the Respondents had no business in taking the law into their own hands and secretly apportioning the whole or portions of the two parcels to themselves against the Applicant's free will. It was further submitted that the Respondents forged the Applicant's signature and subsequently on 17<sup>th</sup> June 2009 and 8<sup>th</sup> August 2012, transferred to themselves the suit property.

### **The Respondents also spoke**

[5] The Respondents opposed the application and contended inter alia that this court did not have jurisdiction to entertain the application herein, for it was *functus officio* the estate having been distributed. In addition, they argued that during distribution of the estate of their deceased father it had been always agreed that the estate would be shared equally among houses and that Nyaki/Giaki 1212 was for daughters of the deceased (the respondents). They alleged that the Applicant transferred the said property voluntarily just like she did with Nyaki/Giaki 1209.

[6] The Respondent also submitted in support of their arguments and more specifically that the judge was very specific that the distribution was to be as per the distribution proposed in summons for confirmation dated 8<sup>th</sup> October 2003 and that there was no doubt that the lands pursuant to the said distribution had been since transferred and registered in the names of the parties. Similarly, that there were no strangers to the Applicant's house who were registered as owners and that the registrations were procured in 2005 barely 4 months after confirmation of the grant which have remained undisturbed for over 9 years.

[7] It was further contended that the court did not have jurisdiction since under the law of succession there existed no provision for a "chamber summons" as the law only allows for "summons general form" and that further the provisions of law under which the application was premised had not been stated.

### **DETERMINATION**

[8] Upon thoughtful consideration over this application, I take the following view of the matter. I wish to settle a preliminary issue first. The last two submission by the Respondent that: (1) the court did not have jurisdiction the law of succession does not provide for a “chamber summons” but “summons general form”; and (2) that the law under which the application was premised had not been stated; are the type of technicalities which were depreciated by article 159(2)(d) of the Constitution of Kenya, 2011. I say no more. On a more serious note, doubtless, the grant herein was confirmed on 3<sup>rd</sup> November 2004. According to the said grant, the suit properties namely Nyaki/Giaki 1212 and 1213 were distributed to the Applicant wholly. The said grant was, however, subsequently rectified and an amended grant dated 9<sup>th</sup> June 2008 was issued. Nevertheless, the amended grant did not affect the share of the applicant as had been identified and settled in the original Grant in respect of the two properties. It is also on record that when the Application for Confirmation of Grant came up for hearing on 18<sup>th</sup> October 2004, the court inter alia recorded the following consent:

**“the estate be distributed between the house of Hellen Karinthoni which comprises of Isaac Irware, Mary Mburugu, Gladys Mwiti, Geoffrey Irware, Stephen Irware and Silas Gitonga and the house of Ruth Nkina which comprises Ruth Nkina, Rose Kananu, Cecilia Ngayu and David Ndumba as per the scheme of distribution attached to the summons for confirmation of grant dated 8<sup>th</sup> October 2003.”**

It follows, therefore, that the two parcels of land were awarded to the house of Ruth Nkina- the Applicant herein. By that finding, I am thrown back to the Law of Succession Act CAP 160 of the Laws of Kenya which defines house as follows:

**“"House" means a family unit comprising a wife, whether alive or dead at the date of the death of the husband, and the children of that wife;**

In light of that definition and the record, it is erroneous for the Applicant to claim that the two parcels of land belong to her exclusively. The two parcels were distributed to her house which in law comprises of her as a wife and her children. The Respondents herein are daughters of the Applicant and they belong to that house; they should be treated as such. In passing, I wish to state that it is time our society accepted the rights of daughters in inheritance.

[9] With regard to the contention by the Applicant that her signature was forged; no evidence was tendered to prove those allegations. Allegations of fraud are serious and criminal in nature and ought to be proved upon clear, cogent and convincing evidence. None was given here. The allegations remained at very high level of generalization without any distinct proof, thus, they fail.

[10] In the end result, having come to the above conclusions, I find this application to be without merit and I accordingly dismiss it. But, this being a succession matter involving close family members, I order each party to bear own costs of the application. It is so ordered.

**Dated, signed and delivered in open court at Meru this**

**23<sup>rd</sup> day of March 2017**

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**F. GIKONYO**

**JUDGE**

**In the presence of:**

Mr. Ndubi advocate for Appellant

Appellant is present

Mr.Otieno Advocate for Karweru & Co. Advocate for Respondent

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**F. GIKONYO**

**JUDGE**