



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO.294 OF 2015

**IN THE MATTER OF THE ESTATE OF THE LATE REUBEN WALTER MUVYA MUIU
(DECEASED)**

FLORENCE NDUKU MUIUAPPLICANT

VERSUS

VICTORIA TATU MUIU 1ST RESPONDENT

ROBERT MUNYAO MUIU 2ND RESPONDENT

DIRECTIONS

1. One of the Administrators herein **FLORENCE NDUKU MUIU** filed an Application dated 3rd January, 2016 in which she sued her fellow two (2) Co- administrators for the following orders:-

(i) That the two (2) Respondents did not disclose all the assets of the deceased in their Application intestate and the Applicant would wish to add the following properties namely Kithimani Adjudication Plot numbers 182, 406, 1181, 2893, 2081, 2895, 2080, 3920, 4620, 4621, 40, 4181, 4182, 4183, 4184, 4185, 4186, 4187, 4188, 4190, 4191, 4192, 4193, 4194, 4195, 4196, 4029, 4030, 3918, 3919 and 3920.

(ii) That the Respondents, Land Registrar and Adjudication Officers be prohibited from transferring, leasing, subdividing, charging or otherwise disposing of the property of the deceased Kithimani "A" Adjudication Plot No. 3999, 4000, 4001, 4003, 4004, 4005, 4006, 4007, 4008, 4009, 4010, 4011, 4012, 4013, 4014, 4015, 4016, 4017, 4018, 4019, 4020, 4021, 4022, 4023, 4024, 4025, 4026, 4027, 4031, 406, 1181, 2893, 2081, 2895, 2080, 3920, 4620, 4621, 40, 4181, 4182, 4183, 4184, 4185, 4186, 4187, 4188, 4189, 4190, 4191, 4192, 4193, 4194, 4195, 4196, 4029, 4030, 3918, 3919, 3920 pending the hearing and determination of this Succession Cause.

(iii) That the two (2) Respondents do render true and correct accounts of the rent they have been collecting from the deceased's assets without involving the Applicant and other beneficiaries from the time of the death of the deceased and any further rent been collected to be deposited in joint account to be opened in names of the three administrators as signatories and accounts holders.

(iv) That costs be awarded to the Applicant.

2. The other two (2) administrators **VICTORIA TATU MUIU** and **ROBERT MUNYAO MUIU** filed another Application dated 11th July, 2016 in which they sued the Co-administrator for the following

reliefs:-

(i) That the third Petitioner FLORENCE NDUKU MUIU be forthwith restrained by an order of the court from interfering or intermeddling with the real estate of the deceased person with the law, pending the issuance of an order confirming the grant.

(ii) That costs of this Application be in the cause.

The two Applicants relied on the following grounds:-

(a) The 3rd co-administrator is intermeddling with the estate of the deceased.

(b) The 3rd co-administrator has convened illegal meetings with unauthorized persons, clan elders to sub-divide the deceased's properties.

(c) The 3rd co-administrator is acting illegally.

(d) The 3rd co-administrator's conduct of forcefully demanding a division of the deceased's real estate constitutes a breach of the law.

3. After perusing the parties two Applications dated 3/1/2016 and 11/7/2016 together with the lengthy rival affidavits and annexures some of which were filed as late as 14th March, 2017. It is the considered view of this court that the Applications could be properly disposed of by way of viva voce evidence. This is so because the matters raised by the deponents require the deponents to take the witness stand and to give oral evidence so as to allow for cross-examination before the court could make a determination on the claims raised and prayers sought. Consequently and pursuant to rule 73 of the Probate and Administration Rules I make the following directions:-

(1) The two (2) Applications dated 3/1/2016 and 11/7/2016 shall be canvassed by way of viva voce evidence.

(2) Parties to file and serve witness statements if need be within 30 days from today.

(3) The status quo obtaining at the time of filing the Applications in regards to all the properties of the deceased Reuben Walter Muvya Muiu shall be maintained until the final determination of this cause.

It so ordered.

Dated, signed and delivered at MACHAKOS this 27th day of JULY, 2017.

D. K. KEMEI

JUDGE

In the presence of:

Mburu for Mrs Oduor for Florence Nduku

Musyimi for Koki Mbulu for the 2 Administrators

C/A: Kituva