



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**SUCCESSION CAUSE NO.13 OF 2010**

**IN THE MATTER OF THE ESTATE OF M'NDEGWA M'RIRIA (DECEASED)**

CHARLES KABURU NDEGWA.....1<sup>ST</sup> PETITIONER

JOSPHINE KANIKA NDEGWA.....2<sup>ND</sup> PETITIONER

Versus

CATHRINE KANYUA MUNENE.....APPLICANT

**RULING**

[1] I have before me a Chamber Summons Application which is expressed to be brought under Sections 45 and 47 of the Law of Succession Act CAP 160 and Rules 49 and 73 of the Probate and Administration Rules. The Applicant has sought the following orders:

1. ***THAT in the first instance this Honourable court be pleased to certify this application as urgent and the same be heard ex parte.***
2. ***THAT this honourable court be pleased to issue orders to stop the Petitioner and his brother one Morris Mugukwu from intermeddling, subdividing and/or transferring or in any manner interfering with Land Reference NO. Nyaki/Chugu/659 and 660, L.R NO. Nyaki/Kithoka 1818 and 1819, LR NO. Nyaki/Kithoka/2079 and resultant subdivisions No's 421,422,423,424 and 425 pending the hearing and determination of this application***
3. ***That this honourable court be pleased to direct the O.C.S Meru police station to ensure and enforce the orders issued by this honourable court in prayer 2 above.***
4. ***THAT this honourable court be pleased to issue orders to stop the petitioners and their agents or any other person acting under their names from intermeddling and disposing the Estate of the deceased comprised of L.R NO Nyaki/Chugu/659 and 660, .R NO. Nyaki/Kithoka 1818 and 1819, L.R NO Nyaki/Kithoka 2079 and resultant subdivision Nos. 421,422,423,424 and 425 pending the hearing and determination of this cause.***
5. ***THAT this honourable court do issue further orders as may be necessary for the interest of justice to prevent the intermeddling with the estate herein pending the hearing and determination of this cause.***
6. ***THAT costs be provided for.***

[2] The said application is made by the Applicant who is stated to be a daughter and a dependant of the deceased. The major argument in support of the application is *inter alia* that the Grant has not been confirmed yet the estate is being transferred to 3<sup>rd</sup> parties to the detriment of the rightful beneficiaries. That this is an act off intermeddling with the estate which will only make the Applicant and other family members to suffer loss and damage unless it is stopped. She contended further that this cause is pending

distribution of the estate but the Petitioners have refused and/or failed to have the grant confirmed.

### **The 1<sup>st</sup> Petitioner opposed application**

[3] The 1<sup>st</sup> Petitioner filed a Replying Affidavit on 15<sup>th</sup> October 2015, and deposed inter alia that they have no intention of intermeddling or transferring the estate to any 3<sup>rd</sup> party and that the application was malicious and full of falsehood only aimed at maligning his name. It was his case that the applicant and the other beneficiaries are not ready to sign consent on the distribution which is the reason why they had not applied for Confirmation of Grant. Second, he argued that, before their father died, he had convened a meeting of all the family members in which his daughters openly said that they were not interested in the family share. Consequently thereof, their late father allocated and shown each son a portion of the family land. He also denied that he had disposed of any part of the estate as alleged.

### **The 2<sup>nd</sup> Petitioner's Case:**

[4] The 2<sup>nd</sup> Petitioner denied having intermeddled with the estate of the deceased and contended that the 1<sup>st</sup> Petitioner and one Morris Mugukwu were the ones who had intermeddled with the estate of the deceased. The 2<sup>nd</sup> Petitioner further stated that the 1<sup>st</sup> Petitioner had fraudulently sold and transferred land parcel numbers Nyaki/Kithoka 4521, 4523, 4524, 4525 and 4522. To her, these transfers were illegal and fraudulent as they were done before Confirmation of Grant. Consequently, she prayed that the application dated 20<sup>th</sup> May 2015 be allowed as against the 1<sup>st</sup> Petitioner and one Morris Mugukwu as they were the ones intermeddling with the estate of the deceased.

### **DETERMINATION**

[5] When this matter came up for hearing on 19<sup>th</sup> October 2015, the court directed that the application herein be canvassed by way of written submissions. Parties submitted. Briefly, the Applicant's case is that the 1<sup>st</sup> Petitioner has illegally and unlawfully transferred land parcel numbers Nyaki /Kithoka 4521, 4522, 4523, 4524 and 4526 which are resultant subdivisions of the deceased's land parcel No. Nyaki/Kithoka/2079. And that these transfers were illegal as they were made before confirmation of the Grant. From the submission and evidence by the applicant, the deceased died in the year 2006 and this cause was filed on 15<sup>th</sup> January 2010; yet the Petitioners annexure marked "CKN1" a title deed indicated that it was issued to the 1<sup>st</sup> Petitioner on 15<sup>th</sup> November 2013- long after the death of the deceased. Therefore, the allegations by the 1<sup>st</sup> Petitioner that the said land was transferred to him by the deceased will need intense interrogation during confirmation. I note his explanations the replying affidavit filed on 16<sup>th</sup> October 2015 and a further replying affidavit dated 11<sup>th</sup> November 2015 relate to matters which should be adduced during confirmation and distribution of the estate. I have also considered the arguments by the 2<sup>nd</sup> Petitioner that she has not intermeddled with the estate of the deceased and that it was the 1<sup>st</sup> Petitioner who was intermeddling with the same. I now take the following view of the matter.

[6] After careful consideration of the instant application, the documents before the court as well as the rival submissions by the parties, there is no doubt that the 1<sup>st</sup> Petitioner has transferred some of the parcels forming part of the deceased estate to third parties. The record does not support the defence by the 1<sup>st</sup> Petitioner that the deceased had transferred some of the parcels of land forming part of the deceased estate to him prior to his death. He did not even produce any evidence to prove his allegations. The 1<sup>st</sup> Petitioner's explanations in the affidavits filed as I had earlier stated are not backed by evidence- at least none has been presented. Both the applicant and the 2<sup>nd</sup> Petitioner demonstrated that the 1<sup>st</sup> Petitioner transferred some of the parcels of land forming part of the deceased estate to 3<sup>rd</sup> parties- see the title deeds and sale agreements. These actions of the 1<sup>st</sup> Petitioner to transfer some parcels of land of the deceased estate were done before confirmation of the grant, thus, without the authority of the law. These acts were in flagrant contravention of section 55 and 82 of the Law of Succession Act as he did not have the powers to do so under any law. See **Section 55 of the Law of Succession Act CAP 160 of the Laws of Kenya which stipulates:-**

**“No grant of representation, whether or not limited in its terms, shall confer power to distribute any capital assets constituting a net estate, or to make any division of property unless and until the grant has been confirmed as provided by section 71.”**

Similarly, see **Section 82 (b) (ii)** of the **Law of Succession Act** on this prohibition in the terms that:-

**“(ii) No immovable property shall be sold before confirmation of the grant” [Emphasis mine].”**

[7] It bears repeating that, when the actions by the 1<sup>st</sup> Petitioner are placed on the scale of the law, they amount to intermeddling with the estate, for he did not have any authority under the law to distribute the estate of the deceased. See **Section 45** of the **Act** which prohibits acts of intermeddling in the following terms, that:-

**“Except so far as is expressly authorized by this Act or by any other written law or by a grant of representation under this Act no person shall, for any purpose take possession or dispose of, or otherwise intermeddle with any free property of a deceased person.”**

[8] Accordingly, I find and hold that the actions of the 1<sup>st</sup> petitioner amounted to intermeddling. I will, nonetheless, not apply the full force of section 45 of the Law of Succession Act upon the 1<sup>st</sup> Petitioner. Instead, it suffices to allow the application herein in terms of prayers 2, 3 and 4 as against the 1<sup>st</sup> petitioner only since there is no evidence that the 2<sup>nd</sup> petitioner has intermeddled with the estate of the deceased. More specifically, I order:-

1. ***THAT the Petitioner and his brother one Morris Mugukwu and their agents or any other person acting under their names are restrained from intermeddling, subdividing and/or transferring or in any manner interfering with Land Reference NO. Nyaki/Chugu/659 and 660, L.R NO. Nyaki/Kithoka 1818 and 1819, LR NO. Nyaki/Kithoka/2079 and resultant subdivisions No’s 421,422,423,424 and 425 pending the hearing and determination of this cause.***

2 ***The parties are further directed to file an application for confirmation of grant and an appropriate mode of distribution within 30 days in accordance with the provisions of the law under the Act so that the matter can come to its logical conclusion once and for all.***

3 ***This being a succession matter I will make no order as to costs.***

**Dated, signed and delivered in open court at Meru this 25<sup>th</sup> day of January 2016**

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**F. GIKONYO**

**JUDGE**

**In the presence of:**

Mr. Gikunda advocate for Omari advocate for applicant

Mr. Kirima advocate for Ondieki and Gitonga advocates for 1<sup>st</sup> and 2<sup>nd</sup> respondent respectively.

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**F. GIKONYO**

**JUDGE**

