

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

SUCCESSION CAUSE NO. 37 OF 2015

**IN THE MATTER OF THE ESTATE OF NJIRU M'ANDABARI alias NJIRU M. ANDUBARI
(DECEASED)**

VERSUS

ELIZABETH RUGURU NJIRU.....PETITIONER/RESPONDENT

RULING

1. This application was brought under certificate of urgency seeking an order of the court to remove the restriction placed by the Assistant County Commissioner Runyenjes in respect of land parcel No. NGANDORI/KIRIARI/3193 to enable him implement a confirmed grant in his favour. She has annexed a supporting affidavit dated 26/04/2016. according to her affidavit, she has authority of her co-wife and co-administrator to prosecute this application. It is her affidavit evidence that they petitioned for a grant of letters of administration in respect of their deceased husband Njiru M'andabari. The said parcel of land was part of the estate of their late husband. A confirmed grant was made in their favour on 3/3/2016. she has further stated they have been unable to implement the grant and distribute the land because the Assistant Commissioner Runyenjes has placed restriction in respect of the suit land.
2. Furthermore, she has stated that the Assistant County Commissioner has never declared his interest in the estate and has never filed any objection or protest for consideration by the court. She has also stated that the action of the Assistant County Commissioner is not only illegal but is also unwarranted and is contemptuous of the court.
3. The applicant has also stated that the restriction entered by the Assistant County Commissioner is made to frustrate the administrators from administering the estate of the deceased.
4. Finally she has stated that her advocate wrote to the Assistant County Commissioner to remove the restriction but the Assistant County Commissioner ignored or refused to do so.
5. The affidavit evidence of the applicant is unopposed.
6. The Assistant County Commissioner did not file any replying affidavit. He also did not attend the hearing of this application, notwithstanding he was properly served with notice of hearing. I find that he had adequate notice of this application.
7. In the light of the foregoing evidence I find that the Assistant County Commissioner is not justified in any way to place restriction in respect of the suit land. I also find that unless it is removed, it will frustrate the administrators of the estate from administering and distributing to the beneficiaries their shares in the estate. I therefore find that the applicant is entitled to the orders sought.
8. There will be no orders to cost.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **25TH** day of **MAY** 2016

Court clerk Njue

J.M. BWONWONGA

JUDGE

25/05/2016