



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

SUCCESSION CAUSE NO. 180 OF 2014

IN THE MATTER OF THE ESTATE OF MARGRET WAIRIMU NJAGI
(DECEASED)

AND

ANTONY MUTHIKE NJAGI.....PETITIONER

VERSUS

FAITH MUMBI NJAGI.....1ST OBJECTOR/APPLICANT

JANE MABUTI NJAGI.....2ND OBJECTOR/APPLICANT

BEATRICE WANGUNDI KIAMA.....CREDITOR/RESPONDENT

RULING

1. This is a ruling in respect to a Notice of Motion dated 28th June, 2015 brought in respect to the estate of Margaret Wairimu Njagi but brought by a party that is not described. The application seeks to restrain Antony Muthike Njage one of the administrators herein and one Beatrice Wangundi Kiama also not assigned any description.
2. The application is brought under **Section 45, 47 and 52 of the Law of Succession Act** and **Order 37, 40, and 51 of The Civil Procedure Rules 2010 Section 1A, 1B and 3A of Civil Procedure Act** and **Article 159** of the Constitution.
3. I have looked at the application and with due respect to the applicants' counsel the application is incompetently drawn and is irredeemably defective in law and form for the following reasons:
 - a. The properties sought to be restricted are not given.
 - b. The party/parties to the application are not described or named. This court is unable to tell who it is that is moving the court and who the respondents are. Description of parties in a suit or cause is a basic, elementary and important and this court is unable to fathom how such a basic requirement can escape the attention of counsel.
 - c. The Law of Succession Act is complete with its own unique set of prescribed procedures in dealing with any issue arising therefrom. By a dint of the provisions of **Rule 63(1) of Probate and Administration Rules** the application of **Civil Procedure Rules** is quite restricted to specific rules of the **Civil Procedure Rules** and certainly the provisions of **Order 37, 40 or 51 of the Civil Procedure Rules** do not apply. An application for injunction or for any prayers sought in this application must comply with **Rule 59 of the Probate and Administration Rules** which provides that applications in succession causes shall be in form of summons. There is no place for Notice of Motions in litigious proceedings in succession causes and **Rule 72 of Probate and**

Administration Rules makes it mandatory for parties in succession causes to comply with the procedures provided for in the rules that govern succession proceedings in court. Rules of Procedure are there to regulate order in court for convenience of everyone and timely dispensation of justice. The rules of procedure and the provisions of **Civil Procedure Act** save as provided for under the above cited rules do not apply in succession proceedings.

4. In view of the above, this Court finds that to the extent to which I have pointed out, the application dated 28th June, 2015 is incompetent and defective. This Court has not been properly moved and I have no other option other than to strike out the application with costs. However, owing to the consent of parties entered in court on 11th April, 2016 and cognizant of the interest of justice, I am inclined to invoke the provisions of **Section 47 of Law of Succession Act Cap. 160** and **Article 159 of the Constitution** and order pending the administration and/or determination of this cause an order of status quo in respect to the property comprised in the estate herein namely **KABARE/GACHIGE/2335** and **2336** shall be maintained. The parties to this cause can continue occupying what they have been occupying and utilizing and an order of restriction is hereby issued to be placed on until the estate is fully administered and/or distributed to the respective beneficiaries in accordance with the law.

Dated and delivered at Kerugoya this 18th day of May, 2016.

R. K. LIMO

JUDGE

18.5.2016

Before Hon. Justice R. Limo

Court Assistant Willy Mwangi

Abubakar holding brief for Fatuma for Petitioner/Respondent present

Nyareru for applicant present

COURT: Ruling signed, dated and delivered in the open court in the presence of Nyareru for the applicant and Mr. Abubakar holding brief for Fatuma for Respondent.

R. K. LIMO

JUDGE

18.5.2016