

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

SUCCESSION CAUSE NO. 114 OF 2015

IN THE MATTER OF THE ESTATE OF NJAGI MAGUTA (DECEASED)

JENNIFER GICUKU NJAGI.....APPLICANT/1st RESPONDENT

VERSUS

NJOKA M. MBARIO.....ADMINISTRATOR

EDWARD NYAGA NJAGI.....2nd RESPONDENT

AND

KORIA NJAGI.....BENEFICIARY/APPLICANT

RULING

1. The applicant filed this application under certificate of urgency seeking restraining orders from being evicted from the suit land reference No. Kyeni/Mufu/7391. She also sought variation or vacation of a consent order dated 15th June 2015 that was adopted as an order of this court.

2. The applicant has annexed a supporting affidavit in support of his application. According to him, he is a son of the deceased and the respondents are his siblings. He has also deponed that the second respondent filed a succession cause at Runyenjes Magisterial court being succession cause No. 69 of 2008 and was issued with a certificate of confirmation of grant. He has further deponed that all the beneficiaries were taken into account in the said succession cause.

3. Furthermore, he has also deponed that the first respondent filed summons for revocation of the grant and he obtained an order appointing himself as the administrator. It is also his further affidavit evidence that none of the beneficiaries including the applicant were aware of the existence of the revocation proceedings, which revocation was done by consent. The beneficiaries were not consulted. Finally, the applicant has deponed that the estate had already been distributed and each beneficiary was given his/her share. It is for these reasons that the applicant seeks that the consent order be varied or set aside.

4. It is clear that in this application, all the beneficiaries have not been served with notice of the application. According to the magisterial judgement in succession cause No.69 of 2008, there were nine beneficiaries including the applicant.

5. This application is defective in form for failing to serve all the beneficiaries. It is a cardinal rule that every interested party in a matter should be served to enable him/her to respond. This will avoid creating a ground for setting aside of any order or judgement obtained in the absence of the beneficiaries who were not served.

6. In the circumstances, the applicant is hereby directed to serve all the beneficiaries and other interested parties and thereafter set the application for hearing.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this 16th day of June 2016

In the presence of Ms Muthoni for the applicant and in the absence of both respondents.

Court clerk NJue.

J.M. BWONWONGA

JUDGE

16.06.16