



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**SUCCESSION CAUSE NO.558 OF 2014**

**IN THE MATTER OF THE ESTATE OF M'MUTUAM'KIRINGUA (DECEASED)**

**CHARITY GACHERI MUTUA.....APPLICANT**

**VERSUS**

**KINOTI M'MUTUA..... 1<sup>ST</sup> PETITIONER**

**ERICK KIMATHI MUTUA..... 2<sup>ND</sup> PETITIONER**

**RULING**

**Order to compel administrator to transmit estate**

[1] The application dated 10<sup>th</sup> May 2016 is asking the court to do three things, namely;

***(a) Restrain the 1<sup>st</sup> Petitioner from interfering with the Applicant's quiet possession of the house in L.R NO ABOTHUGUCHI/RUIGA/469 (hereafter the suit land);***

***(b) Compel the petitioners to subdivide and transfer 2 acres of the suit land to the Applicant taking into account her permanent house which has been on the suit land since 1983; and***

***(c) Direct the Deputy Registrar of the court to sign in place of the petitioners all necessary documents to facilitate transfer of the 2 acres of the suit land to the Applicant.***

[2] From the supporting affidavit of the Applicant sworn on 10<sup>th</sup> May 2016, and the grounds on the application, her major complaint is that, she is the rightful beneficiary of 2 acres from the estate property as shown in the confirmed grant. However, contrary to their agreement and without consulting her, the petitioners subdivided the estate property into four parcels running from No 3015 to 3018. The said subdivision did not take into account that she had erected a permanent house on the land in that after subdivision, her house rests in the boundary of parcel number 3016 and 3017 yet she has been allocated parcel No. 3015 far away from her house. She seeks the court to direct a subdivision that accords with and respect developments done by each beneficiary. She also complained of threats to her life and of eviction from her house. She stated that unless orders of injunction are issued, the threats will be effected and she will suffer irreparable damage.

[3] The petitioners opposed the application and filed a joint Replying affidavit. Their main contention is that the house the Applicant claims to be hers is really their parents' house in which all of them were raised. They further averred that the Applicant is married and lives elsewhere and not in the house on the estate property; she got a bigger portion than the other sisters; and that she only intends to complicate the

distribution of the estate. They contended also that she refused to pay for survey fees and so they have reserved the 2 acres belonging to the Applicant until she pays the survey fees; all the other siblings paid survey fees. They also denied any threat of eviction or upon the life of the Applicant.

## **DETERMINATION**

[4] There is no doubt that the Applicant is the daughter of the deceased and is entitled to 2 acres of the suit land as per the Certificate of Confirmation of Grant issued on 18<sup>th</sup> December, 2014. The quarrel is that the subdivision of the estate property was done contrary to the agreement of the parties concerned and was done without consulting her. The effect of the impugned subdivision is that she is being denied her house-a semi-permanent constructed of stones and timber- which she built on the suit land in 1983 with full consent of the deceased. According to the subdivision the said house lies on the boundary between parcel number 3016 and 3017 whereas she has been shown parcel 3015 to be her parcel. All parties have confirmed that there is an existing house on the estate property save the petitioners argued the house belonged to their late father- the deceased- and not the applicant; and that she should lay claim as a beneficiary but not as an owner. The Applicant on the other hand stated that the house is hers. From the record and the averments of the parties it seems that the house is intact and no demolition is likely to occur due to the subdivision herein except the house lies in another parcel other than parcel number 3015 which the Applicant has been told represents her entitlement in the estate as per the confirmed grant. The Applicant did not specifically state that she would like to take the parcel on which the house falls; she is asking for a re-survey instead so that the house falls in her parcel. Despite the averments by the petitioners, there is nothing which would prevent the house going to the Applicant- and I am glad the petitioners recognized that the Applicant has children which she must take care of- and I add shelter. But the arguments herein present a kind of a squirm which may not be easily resolved without the assistance of the surveyor. Accordingly, I call upon the surveyor herein to attend and inform court whether;

(1) He took into account the existing developments on the land when he surveyed it; and

(2) The house in issue has been affected by the subdivision herein.

[5] Upon receipt and consideration of the report by the surveyor, I will, thereafter, give many final orders on this application. In the meantime, the interim orders remain in force and the petitioners shall not in any way harass or threaten with eviction or evict the Applicant from the suit land until I issue my final orders on the application. It is so ordered.

**Dated, signed and delivered in open court at Meru this 31<sup>st</sup> day of August 2016.**

**F. GIKONYO**

**JUDGE**

**In the presence of:**

Applicant – present

1<sup>st</sup> Petitioner – present

Court – Ruling delivered in open court.

**F. GIKONYO**

**JUDGE**

1<sup>st</sup> Petitioner – There are 5 houses on the land. Let her show the Surveyor the house she occupies.

Court – Additional Orders:-

- (a) The applicant shall identify to the Surveyor the exact house she occupies in the estate property and this shall be included in the surveyors report; and
- (b)The Surveyor shall identify the parcel upon which the house in (as above rests).
- (C) The Surveyor shall visit the land within 14 days and file his report on or before 14<sup>th</sup> September, 2016.
- (d) Further directions and orders on 14<sup>th</sup> September, 2016.

**F. GIKONYO**

**JUDGE**