



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CIVIL CASE NO 81 OF 2015 (O.S)

**IN THE MATTER OF THE ESTATE OF M'IKIUGU M'MWIRICHIA alias IKUGU
MWIRICHIA (DECEASED)**

JUSTIN THIORA KIUGU.....1ST APPLICANT

DAVID KUBANIA KIUGU.....2ND APPLICANT

JULIUS KATHURIMA KIUGU.....3RD APPLICANT

AYUB MWITI KIUGU.....4TH APPLICANT

EDWARD MAITETHIA KIUGU.....5TH APPLICANT

RULING

1. Initially, there were two applications in this matter. The first one was filed by the Plaintiffs and is dated 25/09/2015. It sought orders.

- 1. THAT this Application be certified urgent and the same be heard ex-parte in the first instance.***
- 2. THAT pending the hearing of this Application this Honourable Court do issue an Order of Temporary Injunction restraining the Respondent/Defendant by herself, her agents, employees and/or anybody else whomsoever acting on her behalf from evicting or laying distress for rent against the Applicants or their tenants in respect of Plot Nos. MERU MUNICIPALITY BLOCK 11/210 and NTIMA/IGOKI/2871.***
- 3. THAT pending the hearing of this Originating Summons this Honourable Court do issue an Order of Temporary Injunction restraining the Respondent/Defendant by herself, her agents, employees and/or anybody else whosoever acting on her behalf from evicting or laying distress for rent against the Applicants or their tenants in respect of plot Nos. MERU MUNICIPALITY BLOCK 11/210 and NTIMA/ IGOKI/2871.***
- 4. THAT the costs of this application be provided for:***

2. This application has the following grounds:

- a. THAT the Respondent is a trustee of the beneficiaries of the Estate of the deceased M'IKIUGU M'MWIRICHIA but is acting in breach of the trust.***

b. **THAT it has become necessary for this Court to intervene before the beneficiaries are thrown into the streets.**

c. **THAT the Applicants have families who wholly depend on the Estate.**

d. **THAT it is in the interest of justice that the application is allowed to abstain (sic) the trustee from causing havoc.**

e. **THAT the Trustee/Respondent is in cause of doing damage to the applicants unless stopped.**

3. The 2nd application filed by the Defendant is dated 9/10/2015 and seeks orders THAT:-

1. This application be certified urgent and be heard ex-parte in the first instance.

2. This Honourable Court be pleased to stay/set aside/ vacate its ex-parte order of 16th September,2015.

3. Alternatively this Honourable Court do order that the Applicants and the Tenants in Plot No. MERU MUNICIPALITY BLOCK 11/210 do deposit all rents/earnings in a joint account in the names of the Advocates for the parties herein.

4. This Honourable Court do issue such further or better orders as will meet the ends of justice.

5. Costs of this application be borne by the Respondents/Plaintiffs.

4. This application is supported by the Affidavit of JOYCE NKATHA KIUGU and has the following grounds:-

1. The Applicant is the Administratrix of the estate of her Husband, M'IKIUGU M'MWIRICHIA.

2. The Respondents are the children of the Applicant.

3. After a protracted battle over the distribution of the deceased M'IKIUGU M'MWIRICHIA'S estate, the Court of Appeal on 12th March, 2015 in Nyeri C.A. Succ. Cause No. 30/2014 confirmed the Applicant as the Administratrix of the Estate of her Husband, the late M'IKIUGU M'MWIRICHIA and ordered, in consonance with section 35 of the Law of Succession Act Chapter 160 Laws of Kenya, that all the properties of the deceased be registered in her names for herself and in trust for the deceased's children.

4. THAT her attempt to receive the proceeds of the deceased's estate and specifically the rented proceeds from MERU MUNICIPALITY BLOCK 11/210 and NTIMA/IGOKI/2871 to inter-alia (sic) have been forcefully thwarted by the Applicants who continues (sic) receiving/utilizing the rents therefrom for their own selfish ends and without as much as accounting for it.

5. The Respondents are now misusing the ex-parte orders of this Honourable Court of 16th September,2015 to fulfill their desires.

6. It is only fair and just that this Honourable Court upholds the letter and spirit of the Court of Appeal judgment and the express provisions of section 35 of the Law of Succession Act, Chapter 160 Laws of Kenya.

5. This suit involves close family members. All the Plaintiffs are the Sons of the 1st Defendant who is an elderly and sickly lady who uses a wheel Chair and is 85 years old. This is a matter where those involved should explore an out of Court Settlement.

6. Having heard the Advocates for both parties and before the 2 applications could be heard and determined and in the interest of Justice, On 12th October, 2015, I ruled as follows:-

1. The Interim Orders granted in the application dated 15/09/2015 are extended pending hearing and determination of the 2 applications.

2. Prayer 3 in the application dated 9/10/2015 is granted to the effect that the Applicants and the Tenants in Plot No. MERU MUNICIPALITY BLOCK 11/210 do deposit all the rents/earnings in a joint account in the names of the Advocates for the parties herein forthwith.

3. The Plaintiffs /Applicants to put in a reply to the application dated 9/10/2015 within 5 days and all parties are granted leave to further respond, if and as they so wish, within 7 days from today.

4. Mention for Directions on 26/10/2015 at the request of the parties.

5. Costs shall be in the cause.

7. A third application dated 11th November, 2015 was filed. It sought to have STEVE MURETI KIUGU, a brother of the Plaintiffs, enjoined as a 2nd Defendant in the suit. By Consent, this application was allowed on 11th November, 2015.

8. Another application filed by JUSTUS THIORA KIUGU on behalf of the Plaintiff is dated 25th May, 2016 and seeks orders:-

1. That the Honourable Court be pleased to certify this application as urgent and it be heard on priority basis.

2. That the Honourable Court be pleased to release cash being held in a dormant account by both the 1st applicant AND KIAUTHA ARITHI & CO. ADVOCATES according to their contributions/savings.

3. That the order be served upon the manager of African Banking Corporation Bank for compliance and a penal Notice to issue thereto.

4. That costs be in cause.

9. The application is supported by the Affidavit of JUSTUS THIORA KIUGU and has the following grounds:-

1. THAT the applicants are the children of the deceased and the respondent.

2. That the applicants require access to the joint account so as to be able to meet their daily needs including health care, food, rents, water and electricity bills and school fees for their children.

3. That the applicants cannot currently meet their daily needs as they have no other source of income.

4. That the (sic) JUSTUS THIORA KIUGU is a signatory to the account.

5. That no party shall be prejudiced by granting this application as interests of all the parties will be taken into consideration.

6. That the applicants shall give an accurate account of all the funds once granted.

7. It is so ordered.

10. The Supporting Affidavit states as follows:-

“I JUSTUS THIORA KIUGU ID NO. 16106790 OF P.O BOX 3277-60200 Meru do hereby make oath and states as follow:-

(1) That I am the 1st Applicant and son to the deceased and the Respondent and thus competent to swear this affidavit.

(2) That the Court of Appeal did make Judgment on 12th day of March, 2015 and made the respondent name (sic) be registered in the assets of our late father to hold in trust for herself and the deceased children in equal shares.

(3) That E & L Court did make a ruling on 12 th day October, 2015 ordering that I and respondent do open a joint account as signatories.

(4) THAT the Honourable Court ordered us to deposit rent collected from our business premises to the joint account.

(5) That at the time of death of our father, we were working for gain on the premises that we were ordered (sic) deposit the rent into the joint account.

(6) That all this animosity is being caused by our brother one STEVE MURETI KIUGU of which the Court of Appeal did not wish the same animosity to continue by ordering each one of us to bear their own costs as this is a family matter.

(7) That since we stated (sic) depositing the money into the joint accounts as ordered by this Honourable Court on the ruling of 12 day of October, 2015, we have been unable to meet our daily needs including food, health care, school fees for our children and payment of both water and electricity bills.

(8) That our children have been sent home due to lack of school fees and we can no longer meet the same and annexed marked AA1-AA4 are school fees balance (sic) to prove the same.

(9) That one of the applicants wife PETRONILA LUCY KAGENDO MWITI had been bed ridden and hospitalized for more than one year, and family had request (sic) for her discharge due to lack of funds contributed both by the ruling of this Honourable Court on the 12th Day of October, 2015 (sic). Annexed and marked AA5-AA6 are hospital documents providing the same.

(10) THAT she needs to continue with her treatment but the applicants cannot afford the same as they have no access to the joint account.

(11) THAT we now pray that the money being held in the joint account be released to the parties according to their contribution so as be able (sic) to meet their daily needs.

(12) THAT no prejudice will be suffered by the respondent as the best interest of both parties will have been met.

(13) THAT what is deponed herein above is true to the best of my knowledge, information and belief.

11. This application was canvassed by the parties on 26/07/2016. Mr. Mutegi, the 1st Defendant's Advocate and Mr. Mwirigi, the 2nd Defendant's Advocate told the Court that there was a possibility of the parties reaching an out of Court Settlement, if information regarding the amount of money being held in the joint account in ABC Bank was availed to the parties. Mr. Justus Thiora Kiugu, undertook to avail

the required information to all the parties immediately.

12. Mr. Carlpeters Mbaabu, the Advocate for the Plaintiffs proffered the Plaintiffs proposals as follows:-

a. The money deposited in the joint names of Mr. Justus Thiora and Lawrence Kiautha Arithi, Advocate, in ABC Bank, Meru, be released and be shared out to the respective beneficiaries depending on the amount deposited on behalf of each beneficiary.

b. Each beneficiary be allowed to be running his or her own rooms in the suit premises and be appropriating rent therefrom.

c. No beneficiary should interfere with the rooms or rent accruing from the rooms belonging to any other beneficiary.

d. The 2nd Defendant, Steve Mureti Kiugu be directed to allow the Plaintiffs to access their common mother, who is the 1st Defendant .

e. The daughter of the 1st Defendant, Professor Karwitha Kiugu, be allowed to have actual custody of the mother, who is the 1st Defendant, to be taking care of her at her home as she is currently in a critical health position in the home of the 2nd Defendant who is not available to attend to her in Meru because of the nature of his job in Isiolo and since the 2nd Defendant's wife runs a Hotel in Meru Town and leaves home early and returns home late at night.

f. The Plaintiffs be allowed to spend a share of their portion of money in ABC Bank to pay for their children's school fees as well as the huge hospital, mortuary and burial expenses with respect to the wife of the 4th Defendant, Ayub Kiugu, who succumbed to cancer recently.

g. If these proposals are consented to by the parties, this suit be marked as finalised and settled.

13. After these proposals were proffered, the parties suggested that they were amenable to arrive at an appropriate agreement, once details regarding the amount of money held at ABC Bank were availed to them. The parties agreed to come back to Court, the following day, on 27th July, 2016.

14. On 27/07/2016, all the parties confirmed that the 1st Defendant had availed the required information concerning the funds held at ABC Bank, Meru. The bank statement showed that the account had a grand total of Kshs. 920,100.00.

15. The Plaintiffs and the 2nd Defendant told the Court that they were not opposed to the sharing out of the funds in the ABC Account in accordance with each individual's share.

16. The 1st Defendant's Advocate without proffering any reasons, said that his Client was opposed to the sharing out of the funds in the ABC, Meru, Bank Account. He also told the Court that she also opposed the proposal that each individual appropriates money coming out of his/her portion of the suit property.

17. I do note that on 25/04/2016, the parties had consented to the Court deeming all applications in this suit as having been heard and settled with the extant Interim Orders being extended unless the Court ordered otherwise. On that day, the Court issued the following orders;-

a. By Consent, parties to file witness statements and compliance documents so that the Court can peruse them and deliver a judgment.

b. The parties, who are relatives, are encouraged to seek an out of Court Settlement before the next date for directions.

c. Plaintiffs to file witness statements and other apposite documents within 7 days of today and the Defendants to do so within 14 days after the Plaintiffs' Service of the apposite documents upon them.

d. By Consent, all pending applications are deemed heard and settled, with the existing orders being extended unless the Court orders otherwise.

e. Directions on 23/05/2016.

18. I do not understand why the 1st Defendant opposes the sharing out of the funds held at ABC Bank, Meru, to the parties to whom the funds rightly belong. The Plaintiffs have given the Court convincing evidence regarding the need for the funds to be shared out to the parties in accordance with their rightful portions.

19. This Court will hesitate to countenance any other interlocutory applications in this matter. The application dated 28th May, 2016, filed by the applicants is deemed heard and determined. As the parties have substantially complied with Order 11, CPR, this suit should proceed to hearing .

20. I decline to pronounce myself on matters not within the Jurisdictional province of this Court.

21. I issue the following orders:-

1. The Orders granted by this Court on 26th October, 2015, that a joint Account in the names of Justus Thiora and the Firm of Kiautha Arithi, Advocates, are hereby vacated forthwith with the effect that no more funds will continue to be deposited in that account.

2. The funds deposited in the Joint names of JUSTUS THIORA KIUGU and LAWRENCE KIAUTHA ARITHI, ADVOCATE, IN ABC BANK, MERU, be released and be shared out to the rightful beneficiaries depending upon the amount deposited on behalf of each beneficiary.

3. Forthwith, each party/beneficiary is allowed to be running his or her own rooms in the suit premises and to be appropriating rent derived therefrom.

4. No party/beneficiary should interfere with the rooms or rent accruing from the rooms run or held by any other beneficiary.

5. The Plaintiffs and in default, the Defendants to set down the suit for HEARING within the next 60 days.

6. Costs concerning the suit, so far, to be in the cause.

DELIVERED IN OPEN COURT AT MERU THIS 3RD DAY OF AUGUST, 2016 IN THE PRESENCE OF :-

CC: Daniel/Lilian

Mbaabu for Plaintiffs

Mutegi for 1st Defendant

Mwirigi Kaburu for 2nd Defendant

P.M. NJOROGE

JUDGE