

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

PROBATE AND ADMINISTRATION DIVISION

SUCCESSION CAUSE NO. 1836 OF 2010

IN THE MATTER OF THE ESTATE OF BONIFACE NJAGA GITAU (DECEASED)

MICHAEL GITAU NJAGAPROTESTOR/RESPONDENT

- Versus -

CECILIA WANJIKU KIBEPETITIONER/RESPONDENT

R U L I N G

1. The deceased to whose Estate these proceedings relate is Boniface Njaga Gitau, who died on 8th September 2006 while domiciled in Kenya. Letters of administration intestate of all his Estate were issued to his widow Cecilia Wanjiku Kibe, (hereinafter the Petitioner), on 22nd July 2011 and confirmed vide certificate of confirmation of grant dated 12th March 2014.
2. On 29th May 2014 Michael Gitau Njaga, (hereinafter the Protestor), filed summons for revocation of the said grant in his capacity as one of the beneficiaries of the deceased's Estate. The court on 4th March 2015 dismissed the application for lack of merit.
3. The Petitioner has now filed summons dated 7th August, 2015 under **Rule 16(1), 49 and 73** of the **Probate and Administration Rules, Cap 160** seeking orders that the court do direct the Respondent by himself, his family members and or any other person claiming under him to vacate the parcel of land known as Kajiado/Ole Kasasi/687 forthwith.
4. The application is premised on grounds that the court on 4th March, 2015 dismissed the Respondent's application for Revocation of grant. The Petitioner has also filed a supporting affidavit erroneously titled as a replying affidavit. In the said affidavit the Petitioner avers that following the ruling of court dated the 4th March 2015 she applied to the Registrar to be registered as the proprietor of the suit property pursuant to the grant which was confirmed on 22nd May 2015.
5. The Petitioner further averred that her Advocate did write to the Respondent on 8th June 2015 giving him notice to vacate the suit premises which he moved into in the year 2012 while the proceedings herein were going on. That the Respondent replied declining to vacate the said premises.
6. I have perused the record and note that on 6th October 2015 Messers Kahiu and Company Advocates filed a Notice of Change of Advocate on behalf of the Respondent. That there is an affidavit of service on record dated 20th September 2016 and filed in court stating that the Respondent's Advocate were served by registered post since their physical address could not be traced. There is no replying affidavit on record neither is there any evidence that an appeal has been lodged against the decision of the court of 4th March 2015.
7. From the foregoing the court finds that the applications dated 7th August, 2016 which is uncontested

has merit and is allowed in the terms of prayer 1. Further and for the preservation of peace and good order, although it has not been prayed, the court directs the Officer Commanding the Police Station under whose jurisdiction the suit premises falls to provide security during the eviction.

There are no orders as to costs.

SIGNED DATED and DELIVERED in open court this 17th day of November, 2016.

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L. A. ACHODE

JUDGE