



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 523 OF 2012

IN THE MATTER OF THE ESTATE OF COSMAS MUANGE KIVUVA

MARIANA MBAIKA MUANGE APPLICANT

VERSUS

BENJAMIN NDETI NG'ATI RESPONDENT

RULING

1. The **Summons** dated 26/7/2012 seeks orders that the Respondent be restrained from intermeddling with the estate of the deceased by trespassing onto parcel No. Makueni/Kako/665 and cutting down trees, ploughing and chasing one **Simon Mutinda Mumu** out of possession of the land which was sold to him by the owner before it was vested unto the deceased **Cosmas Muange Kivuva** and to keep out of the land until further orders of this Court.
2. It is stated in the affidavit in support that the Applicant, **Mariana Mbaika Muange** is the widow of the deceased, **Cosmas Muange Kivuva**. That the deceased was the registered owner of land parcel No. **Makueni/Kako/665** (hereinafter suitland). That the deceased inherited the said parcel of land from his mother **Agnes Kivuva** through **SRM Succession Cause Makueni No. 3 of 2011**. The deceased was subsequently issued with a title deed. That the deceased thereafter had the land subdivided into two portions with the intention of transferring one portion to a purchaser by the name **Simon Mutinda Mumu**. An affidavit sworn by the said **Simon Mutinda Mumu** in **SRM Succession Cause Makueni No. 3 of 2011** states that he bought the same on 19/1/2011 from **Agnes Ndulu Kivuva** the mother to the deceased herein, **Cosmas Muange Kivuva**. However, the transfer could not be effected as the deceased passed away.
3. The Applicant's complaint is that the Respondent, **Benjamin Ndeti Ng'ati** has taken possession of the whole of the suit land and is intermeddling with the same and destroying the boundary features.
4. The application is opposed. According to the replying affidavit sworn by the Respondent, the deceased, **Cosmas Muange Kivuva** obtained Letters of Administration intestate in the estate of his mother by misrepresentation and concealment of material facts. That the said Grant of Letters of Administration has since been challenged. It is contended that the suitland is a subdivision of land parcel No. **Makueni/Kako/145** which was sold by the late **Kivuva Ndulu** the husband to **Agnes Ndulu Kivuva** and the Appellant's father-in-law.
5. The Respondent has traced his possession of the suitland to the year 1999 when he was put in possession of the same by a purchaser, one **Francis Mutava Muia** who had purchased the same. That prior to giving the Respondent the possession of the suitland, **Mr Francis Mutava Muia** was the one in possession of the land and had built a house and was farming therein.
6. The application was canvassed by way of written submissions. I have duly considered the said submissions.
7. It is apparent from the affidavit herein that **SRM Succession Cause Makueni No. 3 of 2011**

confirmed a grant that resulted in the suitland being registered in the name of the deceased. All the issues raised concerning misrepresentation and concealment of material facts ought to be directed at the said **SRM Succession Cause Makueni No. 3 of 2011**.

8. Although the Respondent traces his occupation of the suitland to one **Francis Mutava Muia**, there are no documents exhibited that reflect the said **Francis Mutava Muia** as the owner of the suitland. There is no affidavit sworn by the said **Francis Mutava Muia** to support the assertions made by the Respondent. If the said **Francis Mutava Muia** purchased the suitland before confirmation of the grant, then he is an intermeddler. It follows that the Respondent is also an intermeddler.
9. Although the Applicant may be an intermeddler, it is contended in his affidavit that he took possession of the suitland in the year 1999. This averment has not elicited any response from the Applicant. It is noted that the subdivision of the suitland was carried out in the year 2011 according to the mutation forms (annexture “mmm 2”). Consequently, this court can only agree with the Respondent’s averment that he is living in a house that was constructed on the suitland in the year 1999 and has possession of the same and has been cultivating therein.
10. What does the above finding portend for the application herein? Taking into account the raging dispute which touches on **SPM Succession Cause Makueni No. 3 of 2011**, I think the ends of justice will be served by the maintenance of *status quo* pending the Respondent taking steps in the **Makueni case**. It is noted that no steps seem to have been taken in the **Makueni case** following the confirmation of the grant therein. I will give the Respondent 60 days to commence the process of regularizing his position. In default the orders sought to issue.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 24th day of February 2015.

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B. THURANIRA JADEN

JUDGE