



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 943 OF 2009**

IN THE MATTER OF THE ESTATE OF ANNAH KALUNDE KYALO (DECEASED)

MULE KYALO ..... PETITIONER

VERSUS

1. PETER KYALO

2. MULEI MUTWEIYA .....

RESPONDENTS

**R U L I N G**

1. The application dated 19/3/2010 seeks orders that the Respondents, his agents, servants and whomsoever be restrained by an order of this Honourable Court from interfering in any manner with the family property known as parcel **No. Masii/Vyulya/585** until this petition is heard and determined.
2. It is stated in the replying affidavit that the Respondents are interfering with the suit property by causing destruction and threatening to sell the same.
3. The application is opposed. It is deponed that the suit property belongs to the 1<sup>st</sup> Respondent who was given the same as compensation for inheriting a smaller portion of land parcel **No. Masii/Vyulya/417**. That the 2<sup>nd</sup> Respondent is a purchaser of the same. That the petition herein was filed without the consent of the Respondents, hence the objection filed herein. It is further stated that some of the properties of the deceased and in particular land parcel **No. Masii/Vyulya/417** were left out of the list of assets reflected in the petition.
4. Directions were given that the application be canvassed by way of written submissions. The Applicants filed theirs but the Respondents did not file any. I have considered the submissions filed.
5. The affidavit evidence from both sides reflects that the Applicant and the 1<sup>st</sup> Respondent are beneficiaries in the state of the deceased. The evidence on record fails to establish whether the land is demarcated on the ground and who occupies which portion on the ground.
6. The 2<sup>nd</sup> Respondent is a purchaser from the 1<sup>st</sup> Respondent. His cause of action would probably lie against the 1<sup>st</sup> Respondent.
7. The grant is yet to be confirmed. This should be done on a priority basis so that each of the beneficiaries get their shares. In the meantime, the *status quo* to remain. The application has merits and is dismissed with costs in cause.

.....

**B. THURANIRA JADEN**

**JUDGE**

**Dated and delivered at Machakos this 19<sup>th</sup> day of March 2015.**

.....

**B. THURANIRA JADEN**

**JUDGE**