



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
SUCCESSION CAUSE NO. 1590 OF 2010
IN THE MATTER OF THE ESTATE OF KIRIKA MUNJUGA (DECEASED)

BETWEEN

HARRISON MUNJUGA KIRIKA..... 1ST APPLICANT

JOHANA NGARUIYA KIRIKA..... 2ND APPLICANT

VERSUS

MARGARET NYATHIRA MUIGA..... RESPONDENT

RULING

1. The applicants are the sons of the deceased Kirika Munjuga who died intestate on 14th August 1978. On 8th January 2007 they successfully petitioned for grant of letters of administration in Principal Magistrate Succession Cause no. 3/2007. The grant was confirmed on 14th October 2008.
2. The respondent filed an application on 11th August 2010 seeking the revocation of the grant. She later withdrew the application. She also lodged cautions against the titles in the suit properties which the applicants have applied to have removed.
3. The applicant filed the present motion dated 27th November 2014 seeking the eviction of the respondent, her children, servants, employees and/or agents from parcels Komothai/Kiambururu/844 and Komothai/Kiambururu/845; they be put into possession; and that the orders be enforced by the court bailiff and the police in Kiambu County. The 2nd applicant swore a supporting affidavit to say that the respondent has no claim to the properties, having withdrawn the application for revocation, and that the applicants as the administrators of the estate should be the ones legally entitled to have possession. The application did not elicit any response from the respondent.
4. Section 47 of the Law of Succession Act (Cap 160) confers upon this court the jurisdiction to entertain any application and determine any dispute under the Act and to pronounce such decrees and make such orders as may be expedient. Further, rule 73 of the Probate and Administration Rules grants the court inherent powers to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. Lastly, upon the death of the owner of a property, the law of succession provides for

the procedure of obtaining grant to enable an administrator step into the shoes of the deceased owner. It is trite that it is only the person who has a grant who can handle the property of the deceased. Accordingly, any act done to the detriment of the estate by a person who has not obtained a grant amounts to intermeddling. (**Gitau and 2 others Vs Wandai and 5 others (1989) KRL 231.**)

5. The applicants have a grant and have gone on to sub divide the deceased's Komothai/Kiambururu/285 and distribute the respective portions. They include Komothai/Kiambururu/844 and Komothai/Kiambururu / 845. I allow the application and order the respondents, and those acting under her, to vacate from the two parcels Komothai/Kiambururu/844 and Komothai/Kiambururu/845 within 60 days failing which they will be evicted by the court bailiff with the assistance of the County Police Commander, Kiambu and the applicants put into possession. Costs shall be borne by the respondent.

DATED at NAIROBI this 29th day of April 2015

A.O. MUCHELULE

JUDGE

DELIVERED at NAIROBI this 30th day of April 2015

W. MUSYOKA

JUDGE