



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
SUCCESSION CAUSE NO. 231 OF 2015
IN THE MATTER OF THE ESTATE OF ELVIS SAMUEL NJUE (DECEASED)

ESTHER WANGECHI NJUE.....PETITIONER

VERSUS

GEORGE WANJAU SAMUEL.....RESPONDENT

RULING

By their notice of motion brought under certificate of urgency dated 9th July, 2015, the applicants have sought the following orders from the court:

- a. An order that the respondent be arrested and prosecuted for interfering and intermeddling with the estate of the late Elvis Samuel Njue.
- b. That an order that the respondent be restrained from entering, trespassing and/or remaining on the applicant's property being land parcel No. Ngandori/Kirigi/8911.
- c. An order directing the demolition and/or disposal of all the debris of the illegally constructed structures on the petitioner's land.
- d.
- e.

The application is supported by an a supporting affidavit of Esther Wangechi Njue. According to her, land parcel No. Ngandori/Kirigi/8911 was curved out from the main land reference No. Ngandori/Kirigi/5339 by the late Harun Samuel Njue before his death and he gave the deceased husband of the petitioner the parcel of land in dispute. He then gave the respondent the adjoining land parcel No. Ngandori/Kirigi/5341. It is her affidavit evidence that notwithstanding an identifiable boundary between the two parcels of land, the respondent in the company of hooligans and workmen destroyed the boundary fence and the foundation of the petitioner's house. After attending family meetings with the assistance of mutation forms, the boundary clearly showed that the land belonged to the petitioner. Notwithstanding the clear boundary features, the respondent suddenly returned back and begun to construct a building on the petitioner's land. It is this construction that necessitated this application.

The petitioner's application is opposed by the respondent. According to the respondent's replying affidavit, the petitioners are misleading the court and are mixing the estate of Elvis Samuel Njue (being the husband of the 1st petitioner) and the estate of his late father Njue Harun Samuel. In support of this, he has annexed an official search which shows that land parcel No. Ngandori/Kirigi/8911 is in the name of their late father Njue Harun Samuel. He has further stated that the applicants/petitioners are trying to

rob the estate of Njue Harun Samuel through the usage of letters of administration of their husband/father without informing the family members of Njue Harun Samuel. It is for these reasons that he has urged the court to dismiss the applicant's application.

I have considered the affidavit evidence of both parties and the submissions of counsel for the applicants. I find that land reference No. Ngandori/Kirigi/8911 is in the occupation of the applicants having been curved out as indicated above. I also find that land reference No. Ngandori/Kirigi/5341 is in the occupation of the respondent. It is common cause that the two parcels of land border each other. The affidavit evidence of the applicants clearly states that it is the respondent who is interfering with their quite possession of their parcel of land. In this regard, the respondent has not rebutted this evidence. Instead, he has responded by merely stating that the land in dispute belongs to the estate of their late father Njue Harun Samuel. The mutation forms which are annexed to the affidavit evidence clearly show that their late father Njue Harun Samuel had approved subdivision of his land into these two parcels which border each other, amongst other subdivisions.

In the circumstances, I find that the respondent has failed to bring evidence to contradict the evidence of the applicant that land reference No. Ngandori/Kirigi/8911 does not belong to the applicants. Neither the applicants nor the respondents have taken out letters of administration in respect of the estate of their late father Njue Harun Samuel. I therefore find that it is unfortunate that the respondent is relying on a technicality to interfere with the parcel of land occupied by the applicants. He has not shown any justification in evidentiary terms as to why he is interfering with the portion in the occupation of the applicants.

In the light of the foregoing, I find that the balance of convenience lies in favour of the applicants. There are entitled to an order stopping the interference of their quite possession of land reference No. Ngandori/Kirigi/8911 pending the hearing and determination of the succession cause that is pending in court. I therefore grant the applicants' prayer No. 3 of the notice of motion to the extent that the respondent is restrained by himself, his agents and/or servants by order of this Hon. Court from entering, trespassing and/or remaining thereon; digging up, constructing and/or erecting thereon any structures onto the said piece and/or parcel of land until the final determination of this application. All the other prayers will depend on the outcome of the pending succession cause. The reason being that if they were granted at this interlocutory stage, they will have the effect of preempting the issues in dispute.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this.....**12th**... day of **NOVEMBER,..2015**

In the presence of

.....

Court clerk

J.M. BWONWONGA

JUDGE

12.11.15