



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 89 OF 2015

IN THE MATTER OF THE ESTATE OF MAINGI MALITI NDUMBA (DECEASED)

**TERESIA KAVILI MAINGI.....PETITIONER/
APPLICANT**

VERSUS

1. MWENZWA MAINGI

2. KATAVI

MAINGI.....RESPONDENTS

RULING

1. The Petitioner/Applicant approached this court by way of summons pursuant to the provisions of **Section 45(1)** of the **Law of Succession Act** and **Rules 6(1)** and **73** of the **Probate and Administration Rules** seeking orders that:
 - The court do issue temporary orders barring **Mwenzwa Maingi** and **Katavi Maingi** from collecting any rent receivable and/or payable by tenants from **Plot Nos. 77 Kalundu Market, 4096/R 214 Kaango** and **4096/R 241 (22) Kaango** which forms part of the intestate Estate of the deceased and/or in any manner interfering or intermeddling with the Estate of the deceased pending hearing of the application interparties.
 - The court to issue orders allowing the Administratrix herein to collect all rent due, receivable and/or payable from the aforesaid plots and deposit the same in court for protection of the liquid part of the intestate Estate of the deceased pending hearing and final distribution of the Estate and/or further orders of the court.
2. The Applicant swore an affidavit in support of the application where she deposed that the deceased was survived by two (2) wives. He left fully developed plots among other properties from which rent is receivable and payable to tenants being **Plot Nos. 77 Kalundu Market, 4096/R 214 Kaango** and **4096/R 241 (22) Kaango**. The rent receivable and/or payable from the aforesaid plots by tenants is approximately **Kshs. 67,000/=**.
3. That after the demise of the deceased, the Respondents his children colluded and forged a letter dated **1st July, 2015**, purportedly written by the firm of **Ms. Jacob Mati & Associates Advocates**, directing that all tenants in one of the plots **4096/323/A (sic)** read plot No. **4096/R 241 (22) Kaango** within **Kitui Municipality** to pay rent only to the said **Katavi Maingi**. Since then **Katavi Maingi** has been receiving rent and misappropriating it and thereby intermeddling with the Estate of the deceased an action that is disadvantageous to other beneficiaries.

4. The Respondents on being served instructed an advocate who sought leave to file a response to the application. Leave was granted as prayed but they failed and/or neglected to file the response within the time given. The application therefore stands unopposed.
5. The Applicant herein petitioned for letters of administration intestate in respect of the Estate of **Maingi Maliti** in her capacity as his eldest widow. The deceased was survived by **four (4) wives** and **many children**, having been polygamous.
6. A grant of representation in the matter has not been issued as no notice of grant inviting objections if any has not been published.
7. The allegation herein is that the Respondents are receiving incoming rent from the Estate of the deceased without any authority.
8. **Section 45** of the **Law of Succession** criminalizes any act that amounts to intermeddling with the Estate of the deceased. It was the duty of the Applicant herein to demonstrate by way of evidence that such an act is taking place. **In the matter of the Estate of Dr. John Muia Kalii (Deceased)** where the court found some family members were collecting rent held that since intermeddling is a criminal offence, evidence to support an allegation must be strong.
9. In the instant matter, it has been demonstrated that the deceased was survived by **twenty-seven (27)** beneficiaries. **Plot No. 4096/R 214** located at **Kaango Market** is in the name of **A. M. Maliti**. Payments of rates in respect of the plot is by **Maingi Maliti**, the deceased.
10. **Annexure "TKM3"** is a letter from **Jacob Mati & Associates Advocates** referring to **Katavi Maingi** of Plot No. **4096/323/A** within **Kitui Town**. **Katavi Maingi** being the 2nd Respondent and there being no evidence to disprove the allegation, this calls for issuance of orders to protect the Estate of the deceased.
11. The first prayer of the application having been spent, I will direct the Applicant/Petitioner to collect all rent due, receivable and/or payable from the Estate of the deceased.

The same shall be deposited in court pending further orders and/or distribution of the Estate. Costs of the application shall be in the cause.

12. It is so ordered.

Dated, Signed and Delivered at Kitui this 15th day of December, 2015.

L. N. MUTENDE

JUDGE