



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 3726 OF 2004

IN THE MATTER OF THE STEPHEN THUBE NGANGA (DECEASED)

RULING

1. Stephen Thube Ng'ang'a died on 19<sup>th</sup> April 2004.
2. Representation to his estate was sought on 10<sup>th</sup> December 2004 by his sons, Charles Kiri and Samuel Kimani. Grant of letters of administration intestate was made to them on 14<sup>th</sup> February 2005. The said grant was confirmed on 4<sup>th</sup> December 2006.
3. On 13<sup>th</sup> March 2013, one of the administrators, Samuel Kimani, filed an application by way of summons under Rule 73 of the Probate and Administration Rules, dated 1<sup>st</sup> March 2013 seeking the removal of his co-administrator Charles Kiri, accusing the latter of intermeddling with the estate and of conduct that does not befit his office. His complaint is that he, the applicant, was entitled to parcel number 3046 and his brother John Njuguna to parcel number 3050\_all exercised from Limuru/Kamirithu/35. The applicant states that co-administrator instead transferring the two parcels to the two of them as stated above, he has interchanged the parcels so that parcel number 3046 has gone to John Njuguna and 3050 to the applicant.
4. The application was served on the respondent, who replied to it vide his affidavit of 15<sup>th</sup> April 2013. The applicant replied to this affidavit vide his sworn on 14<sup>th</sup> May 2013.
5. An administrator can only be removed for gross misconduct and failure to discharge his duties as such. In my view the applicant has not demonstrated any such misconduct on the part of the respondent. He accuses the respondent of intermeddling with the estate. To my mind this is abuse of language. An administrator cannot intermeddle with an estate. Intermeddling is about persons who have no authority to administer an estate doing things with respect to the estate that amount to administration of the estate. The respondent is an administrator, his acts are legal for he has done what the law has expressly given him to leave to do so.
6. The applicant's case is built upon his purported entitlement to parcel No. 3046. I have anxiously gone through the record. I have not seen any material which justifies the applicant's claim to parcel No. 3046. There is no court order awarding parcel No. 3046 to the applicant. He has therefore not convinced me that he is entitled to the said parcel of land, and consequently that the respondent has acted irregularly with respect to the said parcel of land.
7. I do not find any merit at all in the application dated 1<sup>st</sup> March 2013 and I hereby dismiss the same with costs.

**DATED, SIGNED and DELIVERED at NAIROBI this 31<sup>st</sup> DAY OF January, 2014.**

**W. MUSYOKA**

**JUDGE**

W. M. MUSYOKA

JUDGE