



No. 161/2014

**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 1159 OF 2012**

**IN THE MATTER OF THE ESTATE OF NGETI MAVUTI**

**JOSEPH K. MAINGA.....ADMINISTRATOR/APPLICANT**

**VERSUS**

**FESTUS MUTUA KIEMA .....RESPONDENT**

**RULING**

1. By an application dated **19<sup>th</sup> November 2013**, the Applicant an administrator of the estate of **Ngeti Mavuti** seeks this court's order preserving and protecting the estate of the deceased, in particular Plot Number **1085 Utithi Settlement Scheme** against **Festus Mutua Kiema**, the **District Land adjudication and Settlement Officer, Kibwezi Sub-county** together with their servants, agents or any other person whomsoever prohibiting interference and intermeddling with the assets of the estate of the deceased whether by subdivision, alienation and/or disposing off pending the hearing and determination of this application.
2. The application is premised on grounds that there is an application pending for Confirmation of Grant; **Plot Number 1083 Utithi Settlement Scheme** is recorded in the name of the deceased and the respondent; and the respondent and his agents are in the process of subdividing and alienating the assets of the estate of the deceased.
3. The application is supported by an affidavit deposed by the Applicant in which he depones that that he has been in occupation of **Parcel No. 1083/Utithi Settlement Scheme** that is in the name of the deceased having constructed his home thereon since **1969**; the respondent is purporting to un-procedurally execute against the deceased pursuant to an order issued by the defunct Land Disputes Tribunal an action that amounts to intermeddling with the deceased's estate.
4. The respondent though served with the application did not reply thereto.
5. The applicant herein was granted Temporary Letters of Administration Intestate in respect of the Estate of the deceased on the **27<sup>th</sup> May, 2013**. The other beneficiary to the estate is one **Derick Musyoka Kiema**. Assets left by the deceased are a parcel of land No. **1083 Utithi Settlement Scheme** and **Parcel No. 491, Utithi Settlement Scheme**. A letter from the District Land Adjudicating and Settlement Officer, Kibwezi, confirms that the records show the deceased as the owner of the land
6. It has been stated that the Respondent purports to execute a court order issued by **Makindu Court** on the **17<sup>th</sup> August, 2011** (*adopting the order of the Land Disputes Tribunal*) which in the opinion of the applicant is *null and void*. This is the basis upon which the respondent intends to subdivide and alienate assets of the estate of the deceased.
7. Annexure "JKM" is an order issued by the **Resident Magistrate Makindu** in **Civil Case No. 173/2006** where he adopted the ruling of the Land Dispute Tribunal as judgment of the court. This court has not been made privy to the said judgment. The case was between **Ngeti Mavuti** the deceased as the plaintiff and **Festus Mutua Kiema** and the **District Land Adjudication Officer, Wote** as defendants. **Festus Kiema** is the Respondent herein. To be able to form an opinion whether or not the respondent is intermeddling with the estate of the deceased it would have been imperative for the court to know the contents of judgment of the Lower Court. Reasons for the decision and the actual decision thereof would enable this court decide whether or not it is *null and void* as alleged. It may be prudent on the part of the applicant being the administrator of the

- estate of the deceased to either appeal against the order of the Lower Court or have it reviewed.
8. The upshot of the above is that the orders sought cannot issue. In the premises the application is dismissed. No orders as to costs.

**DATED, DELIVERED and SIGNED** this **22<sup>nd</sup>** day of **JANUARY, 2014**.

**L.N. MUTENDE**

**JUDGE**