



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 265 OF 2013**

IN THE MATTER OF THE ESTATE OF NZOVE MUU (DECEASED)

DANIEL WAMBUA NZOVE.....1<sup>st</sup> PETITIONER/APPLICANT

FRANCIS KIVUITU NZOVE.....2<sup>nd</sup> PETITIONER/APPLICANT

VERSUS

KIVINDYO NZOVE.....1<sup>ST</sup> RESPONDENT

KIVINDYO MUTINDA.....2<sup>ND</sup> RESPONDENT

MUTUA KIVINDYO .....3<sup>RD</sup> RESPONDENT

**RULING**

1. By an application dated **27<sup>th</sup> August, 2013**, the applicant seeks a temporary injunction to restrain the respondents from trespassing, disposing or dealing with **Muthetheni/Kionyweni/179** occupied by the 1<sup>st</sup> applicant pending hearing and determination of the cause.
2. The applicant is based on grounds that;-
  - i. The respondents are beneficiaries of the estate of the deceased and prior to his demise, the deceased had subdivided his property amongst children;
  - ii. The applicant in particular was given parcel No. **Muthetheni/Kionyweni/179** which he was already in possession of;
  - iii. The respondents are interfering with the parcel of land deterring him to cultivate it;
  - iv. It would be in the interest of justice to have status quo maintained pending hearing and determination of the cause.
3. In a response thereto, the respondents deponed that the deceased had three (3) wives, the applicants are from the 2<sup>nd</sup> house while they (*respondents*) are from the 1<sup>st</sup> house and they have lived on the disputed parcel of land since birth. The parcel of land was divided equally amongst the three houses prior to the deceased's demise.
4. The applicants petitioned for Letters of Administration without the knowledge or consent of the 1<sup>st</sup> and 3<sup>rd</sup> houses, therefore the application does not qualify for issuance of an injunction sought.
5. Rival submissions by both counsels for the applicants and respondents have been considered. The parcel of land, the subject of this application forms part of the estate of the deceased. It has been demonstrated that at the time of petitioning for Letters of Administration the applicants did not obtain consent and/or notify most beneficiaries to the estate of the deceased which was deceitful

- on their part.
6. Further it is established that prior to the deceased's demise he purported to distribute his properties. This was however not documented. This resulted into the beneficiaries having a dispute over the estate of the deceased.
  7. No. person ought to intermeddle with the estate of the deceased. The court has a duty of ensuring such property is preserved. It is alleged without certainty that the respondents have intermeddled with the parcel of land purportedly distributed to the applicants. There is however no iota of proof of the allegation. The court cannot grant injunctive orders unless a *prima facie* case is established. In the premises it would call for the *status quo* that was maintained at the time of the demise of the deceased to prevail.
  8. However, this is a case where a temporary grant of Letters of Administration was issued on the **11<sup>th</sup> July, 2013**. **Nine (9) months** have elapsed since then. It would be in the interest of justice that the estate be distributed. It is therefore ordered that *status quo* be maintained pending confirmation of the grant issued. The applicants/petitioners are directed to file the application for Confirmation of the Grant within **one (1) month**. In default the order for *status quo* being maintained shall lapse.
  9. It is so ordered.

**DATED, SIGNED and DELIVERED at MACHAKOS this 23<sup>RD</sup> day of MAY 2014.**

**L.N. MUTENDE**

**JUDGE**