



NO. 264/2014

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

SUCCESSION CAUSE NO. 1077 'A' OF 2011

IN THE MATTER OF THE ESTATE OF KILONZO MUTHEKE MUTHAMA (DECEASED)

NTHEMBA KILONZO.....PETITIONER/APPLICANT

VERSUS

KISUE KILONZO.....1ST RESPONDENT

MUTHEKE KILONZO.....2ND RESPONDENT

KIOKO KILONZO.....3RD RESPONDENT

RULING

1. The applicant, the administrator of the Estate of **Kilonzo Mutheke Muthama** filed an application dated **24th June 2013** seeking issuance of restraining orders against the Respondents, their servants, agents or their employees from interfering with the Estate of the deceased generally and in particular, land parcel number **Kiteta/Kiambwa/343; (suit premises)**, planting euphorbia grass or other boundary marks in furtherance of the said interference, putting up structures on such parcels or in any other manner until the Succession Cause is heard and determined.

2. The application is premised on grounds that, the proceedings herein are still pending and the respondents have started to interfere with a portion of the suit premises; the respondents have been warned against intermeddling with the deceased's estate, but have ignored the said warnings. The order sought is necessary to preserve the status quo until these proceedings are concluded; and that the applicant as the petitioner has the duty to protect and/or preserve the deceased's estate until the cause is concluded.

3. In an affidavit in support of the application, the applicant stated that the Estate of the deceased is yet to be distributed; the respondents have interfered with the estate of the deceased by carrying out a portion of the suit premises by erecting the boundary and now wanted to embark on construction on the suit premises.

4. In a response thereto, the 1st respondent on behalf of the rest stated that the applicant asked the respondents to help her plant Euphorbia grass to mark the boundary for a portion of land she sold to one **Mary Ngatia** having sold the land in 2004. She has also sold land to some other people, transactions that

were witnessed by all the beneficiaries. They denied having uprooted the Euphorbia trees.

5. The applicant herein petitioned for letters of administration intestate in respect of the deceased's estate in her capacity as the widow. The respondents are her sons. She was granted the said letters of administration intestate on the **7th, May 2012**. She filed an application for confirmation of the grant on the **28th January, 2013**.

6. The suit premises (**Kiteta/Kiambwa/343**) is listed as one of the assets forming the estate of the deceased. No liability has been listed. The deceased died on the **2nd October, 1993**. The alleged interference is said to have taken place on the **12th June 2006**. Letters of administration intestate having not been confirmed, nobody is allowed to interfere with the property. The law criminalizes such an act. (*See Section 45 of the Law of Succession Act.*)

7. The applicant herein being an administrator of the Estate of the deceased has a duty of ensuring the Estate is preserved pending distribution. The applicant has been accused of intermeddling with the Estate of the deceased. It was alleged that a sale agreement was signed, all beneficiaries having consented. In his submission counsel for the applicant **Mr. Muithya** alludes to the fact of somebody having benefited and having an interest in the deceased's land. The applicant did not file any response refuting the allegations. This would suggest that both the applicant and respondents are intermeddling with the Estate of the deceased. This is an offence. In the premises it would call upon this court to protect the property. Consequently, status quo shall be maintained.

8. Further, pursuant to the Provision of **Section 73** of the Law of Succession Act, the applicant is hereby notified to file the application for hearing of confirmation of grant within **21 days** hereof.

9. It is so ordered.

DATED, SIGNED and DELIVERED at MACHAKOS this 21ST day of MAY, 2014.

L.N. MUTENDE

JUDGE