



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 63 OF 2006

IN THE MATTER OF THE ESTATE OF MUTHENGI MULUNGU MASYUKO (DECEASED)

1. LUCAS KILIKU NDOLO

2. PHILOMENA MUKONYO MUTHENGI PETITIONER/RESPONDENT

VERSUS

1. DAVID MUSYOKA

2. JOSEPH MUNYAO

3. JAMES KIMEU

4. PETER MUTUNGA

5. ANN NDULULUOBJECTORS/APPLICANTS

RULING

1. The application dated 18th December 2012 seeks orders that a temporary injunction do issue restraining the Petitioner/Respondent by themselves and/or by their authorized agents, servant, employee and/or any person acting under their authority from evicting, interfering and/or in any other manner dealing with the Objectors' possession and occupation of that parcel of land known as **Mbuini/Kabaa/308** initially registered in the names of **Muthengi Mulungu Masyuko** (deceased) pending the hearing and determination of this cause.
2. According to the affidavit in support, the deceased, **Muthengi Mulungu Masyuko** had two wives. That when the Respondents petitioned the court for a grant of Letters of Administration, they concealed the existence of the Applicants who are one of the widows and her four children. Consequently, the Applicants were excluded from the inheriting the estate of the deceased.
3. The application is opposed. According to the replying affidavit sworn by the Respondents, the Applicants are neither wife nor children of the deceased. That the grant of the Letters of Administration was obtained in accordance with the laid down procedures. That the grant has since been confirmed and the land the subject matter of this cause subdivided and new title deed issued. That the land parcel No. **Mbiuni/Kabaa/308** has been the subject of litigation in **HCCC 63/2008 (Machakos)** and the Objectors had been restrained from interfering with the same pending the hearing and determination of the suit.
4. Parties took directions that the application be canvassed by way of written submissions. The Applicants filed their submissions but the Respondents did not file any. I have considered the

submissions filed.

5. It is observed that the summons for revocation/annulment of grant dated 1/3/2012 is yet to be heard. The Applicants contention is that they are beneficiaries to the estate of the deceased. This is an issue that is yet to be determined by the court. In the meantime, there is need to preserve the *status quo*. The application is therefore allowed with costs in cause.

.....

B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 26th day of November, 2014.

.....

B. THURANIRA JADEN

JUDGE