



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NUMBER 269 OF 2009**

**IN THE MATTER OF THE ESTATE OF THE LATE GRACE NJOKI KARANJA DECEASED**

**RULING**

**Injunction against an Administrator**

1. The application before this court is brought under Sections 45, 46 & 47 of the Law of Succession Act Cap. 160 of the Laws of Kenya Rule 59 of the Probate and Administration Rules.
2. The applicants seeks the following orders;
  - i. That John Maina Gatuyu , his servants agents and whosoever be and are hereby restrained from intermeddling with the deceased's Estate property namely Maringo Bar located at Land Reference Number 209/6021, Ofafa Maringo (hereinafter referred to as " Estate's Property" ).
  - ii. That the said John Maina Gatuyu does render a full account to the lawful administrators of the Estate, the Applicants herein, of the benefit he has so far derived from the Estate's property.
  - iii. That the Officer Commanding Station , Jogoo Road Police Station having jurisdiction over Ofafa Maringo area , take all necessary steps to assist the applicants and ensure that the Respondent is evicted from the Estate's property.
  - iv. That costs be provided for
3. The application is premised on the grounds stated on the face of the application and is supported by the affidavit of Mr. Benson Wachira Kingori a co- administrator of the Estate of the late Kingori Kibe with Mrs. Margaret Gathoni Kingori
4. The background of this application is that the Respondent failed to take out Letters of Administration of the deceased Grace Njoki Karanja. The late Grace Njoki Karanja was a partner of the late Kingori Kibe. The applicants are the administrators of the estate of Kingori Kibe. That during the partnership of Kibe and Grace differences arose and through a consent judgment the partnership was dissolved; that after the death of Grace the applicants applied to the court to make John Gatuyu Karanja an administrator being the son of Grace. The court did not make the said order but revived the suit. That the decretal sum has been pending since. That later the applicants took out a citation to accept the Letters of Administration against John Maina Gatuyu and after he failed to respond and the applicants were subsequently appointed as administrators of the estate of the deceased on the 29/11/11. The applicants contend that in spite of the appointment and informing the Respondent of the same he has failed to relinquish administration and possession of the property to enable them administer it as ordered by the court; that the Respondent by virtue of his possession of the property continues to derive benefit to the detriment of Kingori Kibe hence this application.
5. The Respondent was served, but failed to appear at the hearing of this application.
6. I have considered the facts as deposed, they are not challenged. There is a court order date the 11/10/11

appointing the applicants as the administrators of Grace Njoki Karanja instead of John Maina Gatuyu. They have attached the Decree in Civil Case No. 1799 of 1997 (O.S). The consent is clearly spelt out, that the defendant (late Grace Njoki Karanja) was to pay the Plaintiff (the late Kingori Kibe) a sum of Kshs. 350000/- together with interest with effect from the 16<sup>th</sup> June 2003 until payment in full. The mode of installment payment was also stated. It is the applicants' argument that the Respondent is in possession of the Estate's Property and continues to derive benefits to their exclusion. The partnership which was the subject of Civil Case no. 1799 of 1997 (O. S) was a business known as "Brother Bar Maringo". The facts as deposed have not been challenged, thus I find merit in the application and grant the following orders;

- i. That John Maina Gatuyu , his servants agents and whosoever be and are hereby restrained from intermeddling with the deceased's Estate property namely Maringo Bar located at Land Reference Number 209/6021, Ofafa Maringo (hereinafter referred to as " Estate's Property" ).
- ii. That the said John Maina Gatuyu shall does render a full account to the lawful administrators of the Estate, the Applicants herein, of the benefit he has so far derived from the Estate's property within 30 days from the date of this Ruling .
- iii. That the Officer Commanding Station , Jogoo Road Police Station having jurisdiction over Ofafa Maringo area , take all necessary steps to assist the applicants and ensure that the Respondent does not intermeddle with the deceased's Estate's property.
- iv. The applicants are awarded costs of the application.

Orders accordingly.

Dated signed, delivered this **14<sup>th</sup>** day of **November 2014**

**R. E. OUGO**

**JUDGE**

In the presence of;-

.....**For the Applicants.**

.....**For the Respondent.**

.....**Court Clerk**