



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**SUCCESSION CAUSE NO. 435 OF 2012**  
**(Formerly Succession Cause No.76 of 2011)**

**In the matter of the Estate of MARIKO KANYAKIRI GAKUTHI (Deceased)**

ONARAT VUKO MARIKO.....APPLICANT

VERSUS

CIAKUTHII NJOROGE.....1ST RESPONDENT

JOHN IRERI NJOROGE.....2ND RESPONDENT

JOHN MUTHEE NJOROGE.....3RD RESPONDENT

**RULING**

By his notice of motion dated 7th August 2014, the applicant Onarat Vuko Mariko prays for orders that:-

- 1. The Land Registrar Embu be ordered to remove the caution and the restriction registered against parcel No. KYENI/MUFU/3060.***
- 2. That costs of the application be provided for.***

The application is supported by the grounds on the face of the application and those in the supporting affidavit. The applicant depones that she is the administrator of the estate of deceased Mariko Kanyakiri Ciakuthii in this succession cause. The grant was confirmed on 29th May 2014. It has become impossible to administer the estate and to distribute the assets to the beneficiaries due to the caution and restriction placed against the title of the land by the son of the 1st respondent. The applicant has good reason to believe that it is the 1st respondent who has incited her sons to place the caution and restriction.

Ms. Muthoni for the applicant submitted that the 3rd respondent filed a protest in this cause which was dismissed by the Court. She argued that none of the respondents have filed an application to revoke the grant and as such there is no pending issue in this cause. There is an Environment and Land Court case filed by the 1st respondent seeking for orders for title by prescription which does not affect this cause.

The 1st respondent filed a replying affidavit in which she denied inciting her son David Njiru to file the caution and restriction to protect his interest in ELC case No. 128 of 2014. It is alleged by the respondent that the Applicant obtained the grant through non-disclosure of material facts. She claims to have been in occupation of the suit premises for over 19 years. It is her plea that the caution and restriction should hold pending the determination of the ELC Case.

The pleadings before the ELC show that the case was filed on 23/10/2014 by the 1st respondent and another party against the applicant and the estate of the deceased. It is not in dispute that the grant was confirmed on 29/5/2014. It is not denied that the respondents filed a protest against the confirmation of grant which was dismissed. It is also not in dispute that the 1st respondent has been given a share of two acres out of the deceased's land LR. KYENI/MUFU/3060. The other beneficiaries are the applicant who got one acre and one Videa Warue who inherited one acre. Once the grant has been confirmed and land distributed, any aggrieved party should have sought the revocation of grant. None of the respondents have filed an application of that nature. It is also on record that the protest against confirmation by the respondents was dismissed by the court before distribution was made. If the respondent wanted to claim adverse possession, she should have filed the case long ago. It has now come as an afterthought after her efforts to get more shares in this estate have failed. The ELC case was filed after her protest was dismissed and two months after this application was filed,

The restriction and the caution placed against the title of the land was registered by the son of the 1st respondent. This fact has not been denied by the respondents. The respondents seem to be working in cahoots to frustrate the distribution of the deceased's estate. Given the facts of this case, the respondents have failed to convince this court that there is a valid legal interest that is being preserved by the existence of the caution and the restriction against LR. KYENI/MUFU/3060.

I find the application merited and allow it as prayed with costs to the applicant to be born by the respondents jointly and severally.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 8TH DAY OF DECEMBER, 2014.**

**F. MUCHEMI**

**J U D G E**

**In the presence of:-**

**Respondents**

**Applicant**

**F. MUCHEMI**

**J U D G E**