



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
SUCCESSION CAUSE NO. 540 OF 2009

IN THE MATTER OF THE ESTATE OF KITUKU NZOMO WAMBUA (DECEASED)

1. **JOHN MUATHE KITUKU**
2. **PETER MUINDI KITUKU** **APPLICANTS**

VERSUS

1. **MUATHE KITUKU (DECEASED)**
2. **PRISCILLA KOKI MUATHE** **RESPONDENTS**

R U L I N G

The application dated 5/3/2012 is brought under **section 47 and Succession Act 2 Rule 59** of the **Probate and Administration Rules**.

The application seeks the following orders:-

1. **“The respondent being the wife of Muathe Kituku in this cause be substituted as a petitioner instead of her deceased husband.**
2. **The respondent by herself, agents and servants be restrained from intermeddling with the estate of the deceased by damaging, uprooting crops, planting and dispossessing the applicant of parcel No. Kangundo/Kivani/309 until the estate is administered.**
3. **The respondent to be restrained from making permanent improvement on the land and or changing the landscape.”**

The application is supported by the affidavit of the Applicant, **Peter Muindi Kituku** sworn on 5/3/2012. According to the said affidavit, land parcel **No. Kangundo/Katitu/309** forms part of the estate of the deceased. The Applicant accuses the Respondent of taking over the said land with all the improvements thereon and starting to prepare it for the planting season. The Applicant’s contention is that the land was in his possession although wrongly registered in the name of the deceased. The Applicant further stated that he relied on the said land for his food crops.

The Respondent, **Priscilla Koki Muathe** did not file any papers in opposition to the application nor did she attend on the hearing date though duly served.

I have considered the application. The same is unopposed. I allow orders as prayed.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 11th day of July 2013.

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B. THURANIRA JADEN

JUDGE