

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI MILIMANI LAW COURT

SUCCESSION CAUSE 1661 OF 2011

IN THE MATTER OF THE ESTATE OF STEPHEN MUCHERU WAWERU alias MUCHERU WAWERU STEPHEN (DECEASED)

R U L I N G

This application is brought a summons dated 10th November, 2011 and is taken out under **Rules 49** and **73** of the **Probate and Administration Rules**; and **Section 45** of the **Law of Succession Act**. The Petitioner thereby prays from the Court the following orders –

- 1. That this Honourable Court be pleased to make an order that all the rent collections relating to Ruiru Township/596 registered in the name of the deceased be made, preserved and managed by the Petitioner pending the conclusion of the Succession Cause herein.***
- 2. That in the alternative this Honourable Court be pleased to make an order that all the rent collections relating to L.R. Ruiru Township/596 registered in the name of the deceased be made an estate managing agent (sic) to be appointed by the Petitioner or the Court and that the same be deposited in Court pending the conclusion of the succession cause herein.***
- 3. That the costs of this application be provided for.***

The application is supported by the annexed affidavit of Tabitha Waithira Mucheru dated 10th November, 2011 and is based on the grounds that –

- (a) The rents generated by the above property is (sic) being adhocly collected by Hellen Wanjiru Mucheru a beneficiary.***
- (b) The rent collections are being misused and wasted by a beneficiary of the estate of one Hellen Wanjiru Mucheru.***
- (c) The aforesaid beneficiary is intermeddling with the property of the deceased be preserved (sic) for the benefit of all the beneficiaries.***

In a replying affidavit sworn by Hellen Wanjiru Mucheru, the deponent avers that Tabitha Waithira is her biological mother and that her father always encouraged her to invest in real estate. However, because she was away, she sent him money to purchase for her a plot within Ruiru town which plot he purchased, the plot being No. RUIRU TOWNSHIP/596. She trusted her father with her investment and had agreed with him that he would do all the transactions in his name. To the affidavit, the deponent has attached copies of bank documents to demonstrate that her father was developing the aforesaid plot with full knowledge that it belonged to her and she had invested all her money in that plot's development. All her brothers and her mother know too well that the plot in dispute belongs to her, but for reasons only known to her mother, the latter has sworn that she would grab the property from her and give it to her favourite sons.

When the matter was called out for hearing on 19th December, 2011, Mr. Kinyanjui appeared for the Petitioner/Applicant. Neither the Respondent nor his Advocates attended Court. The Court record shows that on 11th November, 2011 the Respondent's Advocates, M/S P.K. Njoroge & Co. Advocates were duly served with copies of summons annexed with a supporting affidavit showing that this matter will be coming for hearing on 19th December, 2011. The Court Process Server duly served them at about 12.45p.m. on the same date. Being satisfied that the Respondents were served in sufficient time to attend

Court, the Court elected to proceed *ex parte*.

The nature of the prayers sought in this application is such that they endear themselves to the concept of preservative orders. Given the magnitude of the dispute as to who should be collecting the rent, I find it imperative that the property be preserved pending the hearing and determination of the main application. I therefore find that it is in the interests of justice that the rents which are currently being collected by one person be deposited in Court in order to safeguard the interests of whichever party will win in that contest.

Prayer 2 of the application by summons dated 10th November, 2011 is accordingly granted as prayed. Costs in the Cause.

Orders accordingly.

DATED and **DELIVERED** at **NAIROBI** this 23rd day of February, 2012.

L. NJAGI
JUDGE