



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI MILIMANI LAW COURT

SUCCESSION CAUSE 2319 OF 2010

IN THE MATTER OF THE ESTATE OF KEZIAH MUTHONI GIITA (DECEASED)

STEPHEN MUYA GIITA

EPHANTUS MWANGI GIITAAPPLICANTS/ADMINISTRATORS

VERSUS

MARGARET KAHUMBU MWAHU

WINNIE WANJIKU KAMANDE RESPONDENTS

R U L I N G

This application is brought by way of summons dated 22nd September, 2011 and taken out under **Section 45** of the **Law of Succession Act, Rules 63** and **73** of the **Probate and Administration Rules**, and any other enabling provisions of the law. The Applicant seeks from the Court the following orders –

- 1. That the Respondents by themselves, their servants and/or their agents be restrained by an injunction from collecting rent, selling, dealing with or in any other way interfering with the property known as NBI/BLOCK 61/255 – OLYMPIC KIBERA until the final determination of this cause.***
- 2. That the OCS – Kilimani Police Station do assist in the enforcement of this order.***
- 3. That the costs of this application be provided for.***

The application is supported by the annexed affidavit of Stephen Muya

Giita, the 1st Applicant herein, and is premised on the grounds that –

- (a) The Petitioners have a prima facie case with a high probability of success.***
- (b) The Respondents have collected the rents to this property without involving the Petitioners or seeking their consent.***
- (c) The Respondents have collected the rents against the wishes of the Petitioners.***
- (d) The property was fraudulent (sic) transferred to Eleneta Njeri Giita (deceased) who is a mother-***

in-law to 1st Respondent and grandmother to the 2nd Respondent.

(e) The Petitioners are likely to suffer irreparable damage if the Respondents continue to collect rents and even sell out the property.

At the hearing of this application, Mr. Stephen Muya Giita, one of the Administrators, appeared in person while Mr. Kamiro appeared for the Respondents. Mr. Giita argued that the transfer of the suit property was effected illegally as it rightly belonged to his mother. He referred to a letter pleading with the National Housing Corporation and urged the Court to revoke the current owners of the suit property on the grounds that the supporting documents on how the transfers were made are available. Mr. Kamiro for the Respondent argued that the Applicant is trying to claim property which he said belonged to his mother through a Succession Cause. The latter's claim that the property was fraudulently acquired by the owners in 1974 is an attempt to start a civil claim on a wrong footing. He should have obtained a limited grant to file a suit, otherwise to file a Succession Cause is to start a case on the wrong footing.

After considering the arguments and submissions of the respective parties, I share Mr. Kamiro's sentiments that what is at stake in this matter is the ownership of the suit property. Such a dispute would be more conveniently dealt with by a Civil Court as opposed to a Succession Court. Before the Applicants were appointed administrators of the estate of the late Keziah Muthoni Giita, they should have applied for Letters ad Litem in order to sue and enforce the rights of the deceased in the said property. However, they did not do so. Instead, they came into a Succession Court claiming some property whose ownership is hotly contested. Now that they are the appointed administrators of the estate of the deceased, they still have a chance to sue in that capacity in order to enforce the rights of the deceased.

For these reasons, the application before this Court is improper and it is hereby struck out with costs to the Respondents.

Orders accordingly.

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

L. NJAGI
JUDGE