



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 348 OF 2002**

***(In the matter of the estate of MUNA MWARA .... Deceased)***

**JOSEPH MBOGO MUNA.....APPLICANT/ADMINISTRATOR**

**VERSUS**

**CYRUS MURIITHI KIURA.....1<sup>ST</sup> RESPONDENT**

**DANSON NJIRU KABORO.....2<sup>ND</sup> RESPONDENT**

**GEOFFREY MURIUKI MUCHIRI.....3<sup>RD</sup> RESPONDENT**

**RULING**

This is a chamber application under Order 39 rules 1, 2, & 3 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act for a temporary injunction to restrain the Respondents, and all those claiming through them, from wasting, trespassing and/or farming on the deceased's land until the dispute is heard and determined. The deceased was Muna Mwara who was the registered proprietor of NGARIAMA/NYANGENI/444. The grievance by the Applicant is that the Respondents are not beneficiaries of the estate of the deceased and yet they have trespassed on the land and are cutting down trees and thereby wasting it.

The Applicant was unrepresented whereas the 2<sup>nd</sup> Respondent was represented by Mr. Morris Njage.

The case by the 1<sup>st</sup> Respondent is that he is on ½ an acre of the deceased's land because he bought the portion for KShs.130,000/= on 11<sup>th</sup> October 2000 from the Applicant following a written agreement ("CMK1a") and that since 2003 he has cultivated tea bushes on the same. The 2<sup>nd</sup> Respondent has sworn that on 2<sup>nd</sup> April 2001 following agreement ("DNK1") he bought a ¼ of an acre of the deceased's land from Paul Muturi Muna for KShs.77,000/= and that the said Muna is a beneficiary of the estate. The 3<sup>rd</sup> Respondent has stated that on 5<sup>th</sup> September 2002 he bought a ¼ of an acre from the Applicant following agreement ("GMM1a") and paid KShs.70,000/=. Since 2003 he has had coffee growing on the portion.

The Applicant is the legal administrator of the estate of the deceased who was his father. The initial administrator was the deceased's widow Dorcas Muringo Muna who subsequently died on 7<sup>th</sup> April 2004. The Grant was confirmed on 21<sup>st</sup> May 2009.

Ideally, the Succession Cause has been heard and determined and therefore there would be no legal basis for the grant of an interlocutory injunction under Order 39. The application is consequently incompetent. Secondly, and I agree with Mr. Njage on this, Order 39 is inapplicable to succession proceedings. Rule 63 of Probate and Administration Rules does not import the Order. Even if the court were to consider the merits of the application despite this technicalities, the averments by the Respondents, that each is on his portion of the deceased's land following purchase were not controverted. The Applicant did not swear any further affidavit to challenge what each Respondent stated.

The conclusion is that the application is not only incompetent but is also without merit. The same is dismissed with costs.

DATED, DELIVERED AND SIGNED AT EMBU THIS 30<sup>TH</sup> DAY OF JUNE 2011.

**A. O. MUCHELULE**  
**JUDGE**