



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

SUCCESSION CAUSE NO. 137 OF 2007

IN THE MATTER OF THE ESTATE OF EDWARD KIBUMBA MUKHWANA (DECEASED)

CHARLES MUKHWANA GALA 1ST PETITIONER
PETER MUKHWANA KOINANGE 2ND PETITIONER

VERSUS

JOSEPH KIPTIONY KIPRONO 1ST RESPONDENT

RULING

A Grant of Letters of Administration Intestate respecting the estate of the late **EDWARD KIBUMBA MUKHWANA** (herein, the deceased) was issued to the applicants **CHARLES MUKHWANA GALA** and **PETER MUKHWANA KOINANGE** on the 23rd November 2007.

The application for the issuance of the said grant dated 19th March 2007 identifies the estate property as being land portions No. **UASIN GISHU/ILLULA SETTLEMENT SCHEME PLOT NO. 306** and **NO. UASIN GISHU/ILLULA SETTLEMENT SCHEME PLOT NO. 307**. The grant is yet to be confirmed and facilitate the distribution of the estate in accordance with the law.

In the meantime, the present application dated 21st April 2009 was filed by the applicants against one **JOSEPH KIPTIONY** (herein the respondent).

The application seeks a temporary injunction order against the respondent restraining him/or his agents/servants from interfering in any manner with the land portion No. **UASIN GISHU/ILLULA SETTLEMENT SCHEME PLOT NO. 307**.

The application also seeks a permanent injunction order and an eviction order against the respondent pending distribution of the estate property.

The main ground for the application is that the respondent purports to hold a title over parcel **NO. UASIN GISHU/ILLULA/320** which is non-existent and whose title was obtained fraudulently. It is the applicants' contention that the respondent has committed acts of trespass on the said land parcel **NO. UASIN GISHU/ILLULA/307** on the basis that Plot No. 320 extends thereon.

In opposing the application, the respondent contends in his verifying affidavit that he is the

registered proprietor of the said Plot No. 320 whose title was obtained upon payment of the sum secured to the Settlement Fund Trustee on the 3rd December 2007. That, the applicants' material portion is a part by eighteen portions yet the applicants maintain in laying claim to his portion of land.

The respondent's annexure dated 24th April 2009 (marked "JKK 4") indicates that Plot No. 306 and 307 were amalgamated and became Plot No. 306 measuring 5.1 Hactares while Plot No. 307 measuring 2.2. Hactares became what was known as Plot No. 320 belonging to the respondent.

The annexure dated 23rd April 2009 (marked "JKK 6") is a request to the applicants to avail their title deed to facilitate correction of errors.

It is apparent that the foregoing contentions and documents availed by the respondent are not substantially disputed by the applicants and even though they allege that the title respecting Plot No. 320 was fraudulently obtained in as much as the Plot is not reflected in the Reference Index Map (RIM), there was no evidence led to establish the fact.

In the circumstances, it cannot be said that the applicants have made out a proper case for the grant of the orders sought. Consequently, the application is dismissed for want of merit. The respondent is entitled to the costs.

In conclusion may it be mentioned that the application was procedurally defective but has been decided on the merits and no more.

J. R. KARANJA
JUDGE

[Dated and signed this 9th day of June 2011]