



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**SUCCESSION CAUSE NO. 126 OF 2002**  
**IN THE MATTER OF THE ESTATE OF KIHURI KIBIRA - DECEASED**  
**AND**  
**STEPHEN KIBIRA KIHURI ..... APPLICANT**  
**VERSUS**  
**GEOFFREY MUGO KIHURI .....RESPONDENT**

**RULING**

In the Summons General dated 11<sup>th</sup> March 2011, Stephen Kibira Kihuri, the applicant herein, applied for an order of injunction to restrain Geoffrey Mugo Kihuri the Respondent herein, by himself, servant and or agents from interfering with the Applicant's use and occupation of his designated portion within L.R. no. Othaya/Gura/25 and to respect the status quo. The Applicant swore an affidavit which was filed in support of the summons. The Respondents each swore a replying affidavit they filed to oppose the summons.

The gist of the Applicant complaint is that on 1<sup>st</sup> February 2011 he received a demand letter from James Mutahi Kihuri and the Respondents asking him to stop forthwith from utilizing the portion. The applicant instructed his advocate to write a demand letter urging the Respondents from interfering with his lawful occupation of the designated portion. The applicant claimed that the Respondents ignored his demands and went ahead to destroy his crops by digging portion with the aim of establishing a fish pond. He annexed to the supporting affidavit photographs of the dug up portions. The applicant stated that he has been utilizing the portion since their father died in 1982.

I have already stated that each of the Respondents swore a replying affidavit to resist the summons. In sum, they alleged that the applicant was given 3.3 Ha. Comprised in L.R.no. Nyandarua/Leshau/Karagoini/Block 1/241. It is said that the applicant in the previous season entered the portion of James Mutahi Kihuri. He was allowed to cultivate but was later given notice to quit when he started destroying crops. It is alleged that the applicant was not apportioned L.R. no. Othaya/Gura/25, the portion he is now alleging he has been given a quit notice. The Respondents claimed that the applicant should not be allowed to establish an interest which does not exist.

Having considered the rival submissions, it is now quite evidence that the Respondents do not deny that they have given the applicant an ultimatum to vacate the portion he is occupying in L.R. no. Othaya/Gura/25. The respondents are simply saying that he was not given that portion but was instead given a portion measuring 3.3. Ha comprised in L.R. Nyandarua/Leshau/Karagoini/Block1/241. The Respondents do not also dispute the fact that they have dug up a portion of land to put up a fish pond. At the moment the substantive issue which is pending the determination of this court is the summons for confirmation dated 23<sup>rd</sup> October 2008 and the affidavits of protest. In the schedule of distribution there is a proposal that L.R. no. Nyandarua/Leshau/Karagoini/Block 1.241 should be given to the applicant and another beneficiary whereas L.R. no. Othaya/Gura/25, should go to James Mutahi, Stephen Kibira and Geoffrey Mugo, the Respondents herein. In short, the distribution of the estate is not complete hence none of the beneficiaries has a right to evict the other from the portion they have been cultivating. It apparent from the replying affidavit of James Mutahi Kihuri that the applicant is actually in occupation of a portion of L.R. no. Othya/Gura/25. In fact James Mutahi Kihuri does not specify when the applicant allegedly moved into occupation. He simply stated that he permitted the applicant to take occupation the previous season.

In the end I am convinced the applicant has established that the Respondents have purported to interfere with his occupation of a portion comprised in L.R. no. Othaya/Gura/25. I will grant him the

orders sought in the summons general dated 11<sup>th</sup> March 2011 in order to maintain the status quo. Since the disputes involves members of the same family I direct that each meets his own costs.

Dated and delivered this 15<sup>th</sup> Day of July 2011.

J.K. SERGON  
JUDGE

In open court in the presence of Ndirangu for the Respondent and N/A Macharia.

J.K. SERGON  
JUDGE