



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

HCC. SUCC. NO. 559 OF 2009

LESIIT J.

IN THE MATTER OF THE ESTATE OF THE ESTATE OF MURURU RIMBUTU (DECEASED)

IBRAHIM GITONGA JACOB..... APPLICANT

VERSUS

ZACHARY KIMATHI MAINGI.....RESPONDENT

RULING

The Application is a Chamber Summons dated 19th September, 2011. It is brought under R.73 P & A Rules and O.40 R 1 and 2 CPR seeking following orders:-

- (a) That the honorable court be pleased to hear this Application exparte in the first instant.**
- (b) That the honourable court be pleased to retain the respondents his agents and servants from building housed, trespassing, encroaching, interfering with the boundary and/or interfering with the applicant's peaceful occupation of LR. No. NYAKI MULATHANKARI 2767 pending interparties hearing of this substantive Application.**
- (c) The honourable court be pleased to order for the eviction of the respondent from NYAKI/MULATHANKARI 2767.**
- (d) The honourable court be pleased to order the OCS Meru Police Station to oversee the implementation of this order.**
- (e) Costs be provided for.**

The Application is premised on the following grounds:

- 1. The applicant was awarded 2.60 acres herein out of NYAKI/MULATHANKARI/131 which has now been subdivide into NYAKI/MULATHANKARI/2766.**
- 2.The applicant got 2767 and 2766 went to the respondent.**
- 3.The respondent has now trespassed into the applicant's portion and is preparing to build houses**

by force and the applicant is apprehensive there would be a breach of peace unless the order herein is granted.

4. The applicant is unable to enjoy his land due to the interference by the respondent and as such unless this order is granted he will suffer irreparable loss and damage.

The Application is supported by an affidavit sworn by the applicant dated 19th September 2011.

Mr. Omayo urged the Application on behalf of the applicant. The Application is unopposed despite being served. The Respondent did not file any replying affidavit.

I have considered this Application. The applicant was awarded to 2.60 acres and the respondent 1.35 acres out of LR. PARCEL No. NYAKI/MULATHANKARI/131 that parcel of land was the only property of the deceased in this case. The petitioners applied for the confirmation of the grant by summons dated 15th November 2010. In that Application all the beneficiaries of the deceased signed a consent to the mode of distribution of the estate under paragraph 6 of the supporting affidavit the petitioners proposed to have the Land Parcel No. NYAKI/MULATHANKARI/131 to be shared between the applicant who was to get 2.60 acres as purchaser and Zachary Kimathi Maingi the Respondent herein 1.35 acres as a beneficiary the grant was confirmed by the court under certificate of confirmation issued by this court on the 8th December 2010. Subsequently the land was subdivided between the applicant and the respondent.

The applicant is complaining that the respondent has encroached on his share of land and is preparing for construction of houses. I am satisfied that the Respondent is trespassing into the applicants parcel of land and that he has no colour of right to enter into that land nor claim over the said land. The fact he did not file any replying affidavit to the Application herein is instructive that he concedes that the land belongs to the applicant.

Being satisfied that the parcel of land now owned by the applicant was given to him as a purchaser and that all the beneficiaries on consented to the transfer of land to him under certificate of confirmation of grant issued by this court on the 8th December 2010; in view of the fact that there has been no opposition or objection to the grant confirmed herein I am satisfied that the applicant is deserving of a finding that he is the sole owner of the property Land Parcel No. NYAKI/MULATHANKARI/2767. I also find that the respondent's entry into the said land amounts to trespassing. I therefore find that the Application sought herein should be granted in the following terms.

1. An order be and is hereby issued for the eviction of the respondent from NYAKI/MULATHANKARI 2767.

2 An order be and is hereby issued that the OCS Meru Police Station to oversee the implementation of this order.

3 There respondent to bear the costs be provided for.

DATED SIGNED AND DELIVERED THIS 3RD DAY OF NOVEMBER, 2011

**LESIT, J
JUDGE.**