



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

Succession Cause 624 of 2009

IN THE MATTER OF THE ESTATE OF M'MURONG'A M'ARIMI *alias* MURONG'A ARIMI (DECEASED)

LYDIA KINYA KARONGA 1ST OBJECTOR/APPLICANT
RICHARD MURIITHI 2ND OBJECTOR/APPLICANT

VERSUS

M'MURONG'A M'MUKIRA RESPONDENT

RULING

The petitioner M'Muronga M'Mukira petitioned for grant of letters of administration intestate in respect of the deceased estate. He described himself in that petition as the son of the deceased. A grant has not yet been issued to him. A caveat has been filed in this matter by Lydia Kinya Kagongo. Lydia, in conjunction with Richard Muriithi, have filed a Chamber Summons dated 23rd March 2010 which is before me for consideration. The application seeks an order of injunction to issue restraining the petitioner from disposing or intermeddling with the deceased property that is, parcel number *Ntima/Ntakira/1878*. In the supporting affidavit sworn by Lydia, it is deponed that parcel number 1878 was subdivided into 5 portions as agreed amongst the applicants, the petitioner and the elders. What I understood from that deposition is that actual subdivision has not taken place but parties have been shown their portions on the ground. Lydia annexed to her affidavit a sketch map showing the divisions and the minutes of the meeting held on 5th November 2009. That meeting was where the agreement was reached to divide parcel number 1878 into 5 portions. Lydia further deponed that despite that agreement, the petitioner secretly entered into a sale agreement with a view to disposing portions of land and thereby targeting the area where Lydia's homestead lies. Lydia further stated that the petitioner had instructed the purchaser to construct permanent buildings on that land even though this succession cause was not yet determined. The application was met by the affidavit of the petitioner. The petitioner in that affidavit confirmed having sold ½ an acre of parcel number 1878 and he said that he used the proceeds to purchase two acres of land elsewhere where he was constructing his residence. There were other depositions made by the petitioner which in my view do not concern this court at this stage. The petitioner alleged that Lydia had uprooted his crops and that as a result he has not had peace on parcel number 1878. What however is of concern to this court is the estate of the deceased. What the petitioner did by selling the deceased property before this court confirm a grant is termed as intermeddling with the deceased estate. That is what Section 45 (1) of the Law of Succession Act provides. That Section is in the following terms:-

“45. (1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with any free property of a deceased person.”

It is no excuse to argue that Lydia being his daughter in law was not entitled to inherit the deceased property. After all, Section 26 of the Law of Succession Act does provide that dependants of the deceased can obtain reasonable provision from the deceased estate. It is however early to state what claim Lydia will have over the deceased property. I do however find that Lydia and her co applicant have satisfied the first principle of granting an injunction. She has shown a *prima facie* case with a probability of success. See the case of **Giella Vs. Cassman Brown & Co. Ltd.** [1973] E.A. That being so, the orders of this court are as follows:-

1. *The court does hereby issue an order of injunction restraining M'Murong'a M'Mukira, his servants or agents from disposing the deceased land being parcel number Ntima/Ntakira/1878 until further orders of this court.*
2. *The court orders that status quo be maintained on parcel number Ntima/Ntakira/1878 until further orders of this court.*
3. *The costs of the Chamber Summons dated 23rd March 2010 shall be in the cause.*

Dated and delivered at Meru this 4th day of June 2010

MARY

KASANGO

JUDGE