



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KITALE

Probate & Administration 389 of 1998

MUIRURI KINYUA KIBEDECEASED

AND

BONFACE MBURU MUIRURI)

GRACE WANGARE MUIRURI).....PETITIONERS

RULING

By summons dated 4th March 2010, pursuant to the provisions of section 47 of the Law of succession Act (Cap 160) Laws of Kenya, Rule 59(1) and 73 of the Probate and Administration Rules, the applicant seeks orders:

1. That this Application be certified urgent and the same be heard forthwith ex-parte.
2. That a restraining order be issued by this court restraining the 2nd Petitioner/Respondent from cultivating, planting, leasing, entering or trespassing onto or in any other manner intermeddling with the estate of the deceased – Muiruri Kinywa Kibe - comprised in PLOT NO. KAKAMEGA/NZOIA/98 and currently occupied by the 1st petitioner pending hearing interpartes and thereafter pending confirmation of grant.
3. That O C S Matunda be directed to enforce compliance of the court order.
4. Costs be provided for.

The application is supported by the annexed affidavit of Grace Wangare Muiruri sworn on 4th March 2010.

The application were served upon the Respondent, Bonface Mburu Muiruri, as per the affidavit of Thomas O. Ochieng sworn on 6th May, 2010. The said respondent failed to attend court. On application I granted the applicant leave to proceed ex-parte.

On behalf of the applicant, it was urged that on 14th April, 2005 the court ordered him (1st administrator) and that his co-administrator (2nd administrator) to file a fresh schedule of distribution within 30 days since they were unable to agree on the mode of distribution. The application for confirmation is currently pending for determination before this court.

That on 14th January, 2005, Hon. Lady Justice Karanja delivered a judgment in which she declared/ found as fact that 2nd administrator had purchased part of the deceased's estate; to wit , plots number KAKAMEGA/NZOIA/12 and KIJABE/KIJABE/BLOCK 1/1729 which was not part of the estate . Equally, the court found as a fact that the 2nd administrator had sold part of the deceased's estate, in Kericho measuring 2.317 hectares to third parties and pocketed the proceeds thereof without accounting for the same to the estate.

That having sold the said parcels, the second administrator is now interfering with the applicant (1st administrator) peaceful enjoyment of parcel No. KAKAMEGA/NZOIA/98 without any colour of right whatsoever. That when one of the applicant's sons, Michael Waweru, passed on the applicant could not bury him by reason of the objection of the respondent.

That between 1st March, 2010 and 3rd March 2010 the respondent (2nd administrator) visited plot No. KAKAMEGA/NZOIA/98 in the company of strangers who started making measurements. From that foregoing episode the applicant believes that the respondent is bent on seeking or disposing of the said property hence this application.

I have carefully analyzed the evidence in support of the application and understood that same. Having done so, I am inclined to grant the orders sought in absence of evidence from the respondent to the contrary.

Accordingly there shall be orders in terms of prayer 2 and 3 of the application. Costs shall be in the cause.

Dated and delivered at Kitale this **1st** day of **July** 2010

N R O OMBIJA
JUDGE