



**O. XXXXIV r 1 and 2 of CPR and s. 73**

**Application for injunction to restrain a beneficiary of the estate of deceased from interfering with crops of another beneficiary of the deceased.**

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**SUCCESSION CAUSE NO. 120 OF 2010**

**IN THE MATTER OF THE ESTATE OF M'IMWAE  
M'ETUARACIU .....DECEASED.**

**MWOIKILANYA**

**IMWAE.....PETITIONER/APPLICANT**

**VERSUS  
PETER**

**MURUNGI.....RESPONDE  
NT**

**RULING**

The application is a chamber summons dated 29<sup>th</sup> April 2010. It has been brought under order xx1x Rule one and two of the CPR and section 73 of P & A rules. There was an error in the law invoked in bringing the application and the respondent raised the issue with the same. It is however clear that the applicant is seeking an injunctive order under Order XXXIX. The error which came about was the omission of one X and is therefore typographical in nature. I will therefore overlook the mistake.

The application seeks the following orders:-

- (a) The honourable court be pleased to hear this application exparte in the first instant.

(b) The honourable court be pleased to restrain the respondent his agents and/or servants from interfering with the applicant's miraa and bananas growing on **LR. No. ITHIMA NTUNENE 2551** until the hearing and determination of this succession cause.

(c) Costs be provided for.

The application is brought on the following grounds

(a) The respondent has since the demise of the deceased started interfering with the applicants possession of **LR. No. ITHIMA NTUNENE 2551** which land was during the life of deceased occupied by the applicant and her daughters.

(b) The respondent by force entered the said portion of land and picked the miraa of the applicant and also felled the Banana stems growing therein.

(c) That the respondent has generally interfered with the applicants and her children peaceful occupation of **LR. No. ITHIMA NTUNENE 2551** and unless he is stopped by an order of injunction the applicant will suffer irreparable loss.

The application is opposed. The respondent has filled a replying affidavit sworn on the 6<sup>th</sup> July 2010. In the replying affidavit the respondent has questioned the applicants right to bring the application on grounds she has never lived on the suit property. He also claims that his step sister Lucy Nkirote assaulted him in December 2009 in an attempt to evict him from the suit land. He also deposes that he is a total stranger to the existence and contents of the purported deceased's written will exhibited by the applicant.

Mr. Otieno argued this application on behalf of the applicant. In his submissions the counsel urged that the suit land has been in possession of the applicant and her daughters since the death of the applicant in 2009. He urged that the respondent has been interfering with the applicant's peaceful possession of the land. And has even assaulted the applicants and her daughters and that a copy of the police bond was annexed to the application. Mr. Otieno relied on an annexed written will of the deceased in which it is shown that the suit land was bequeathed to the applicant and her children and that the respondent does not feature in that land.

The respondent was represented by Mr. Arithi Advocate. In his submissions Mr. Arithi urged that the respondent lives and works on a portion of land which is 0.60 acres out of the suit land. He relies on the replying affidavit where at paragraph 6 the respondent claims that the other occupants of the suit land are the three sons of the applicant. That the applicant and her daughters do not live on the suit land but that they live on a different property also registered in the name of the deceased.

Regarding the will annexed by the applicant Mr. Arithi urged that the respondent is excluded as a beneficiary of 2551. Regarding the police bond Mr. Arithi submitted that it was relevant as it was not issued in the names of the applicants and that in any case the matter is being dwelt with by the police.

I have considered this application. I have perused this Succession Cause and I have noted that it has not been concluded. It was brought this year by the applicant to this application who has petitioned for a grant of letters of administration testate in regard to the averment by the respondent that the will annexed to the application does not exist, that will was part of the documents lounged by the petitioner when she

filed this petition. Granted that the will has not been tested and that the respondent like all other beneficiaries will have the right and opportunity to challenge the will. However for now until that happens the respondent, the applicant and all other beneficiaries living on the suit property must continue to maintain peace. The respondent has no right to interfere with the portion of the land where the applicant and her children are living. It does not matter that the *miraa* and the bananas growing on the portion of the land where the applicant and her children are living were planted by the deceased and not the applicants. The applicant has an equal right to enjoy her peaceful use of the land without interferences from the respondent.

From the tenure of the replying affidavit by the respondent it did not escape me to note that he is spiteful of the daughters of his father so that at paragraph 6 of his affidavit he clearly shows that the daughters and his step mother who is the petitioner have no right over any portion of the suit property. Contrary to the respondent's averments, all the children of the deceased, whether sons or daughters, have equal right to inherit land from their father. This application has been brought against the respondent alone yet the deceased had many sons so it is not true as he is implying in his affidavit that the applicant has singled him out for harassment or that the application has been brought in bad faith. I think this application is deserving. I will grant the application in the following terms;

**1. That the application dated 29<sup>th</sup> April 2010 is granted and the respondent is restrained whether by himself his servants and/or his agents from interfering with the applicants miraa and banana growing on a portion of land LR. No. ITHIMA/NTUNENE /2551 until the hearing and determination of this Succession Cause.**

**2. Each party will bear their own cost of the application.**

Dated Signed and delivered at Meru this 19<sup>th</sup> day of November 2010

**LESIT, J**

**JUDGE**

In the presence of the parties  
Kiriimi – Court Clerk.  
Mr. Kimathi Kiara for applicant.  
Respondent in person.

**LESIT, J**

**JUDGE**