



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA
OF KISII**

Civil Suit 138 of 2008

**FLORENCE KEMUNTO RIOKI.....
PLAINTIFF/APPLICANT**

VERSUS

**STEPHEN NYAMAO OMBWORO alias OSORO
OMBWORO.....DEFENDANT/RESPONDENT**

RULING.

This is an application by the plaintiff seeking an order of injunction to restrain the defendant and his servants and/or agents from entering into cultivating, occupying or trespassing in any manner on a parcel of land known as **Wanjare/Bokeire/2363** hereinafter referred to as “**the suit land**”, pending the hearing and determination of a suit filed against him by the plaintiff.

The application was supported by an affidavit sworn by the plaintiff wherein she averred that she is the interim administrator of the estate of Elijah Rioki Mandere, having been granted letters of administration *Ad Litem* on 30th September 2008 for the purposes of filing this suit. The plaintiff deposed that on or about 23rd June 2008 she learnt that the defendant had trespassed upon the suit land, claiming to have purchased the same from one Hellen Moraa Rioki. The plaintiff is a daughter of the late Elijah Rioki Mandere, hereinafter referred to as “**the deceased**”. The plaintiff further stated that the defendant was illegally cultivating sugarcane on the suit land and had effectively locked out the deceased’s lawful beneficiaries from the suit land. In her view, the defendant was intermeddling with the deceased’s estate.

The defendant filed a replying affidavit and stated that his proper name was Stephen Nyamao Ombworo though he had been sued as Osoro Ombworo. He stated that his occupation of the suit land was with express consent of the lawful beneficiary of the estate of the deceased. He sought to rely on an affidavit filed by Hellen Moraa Rioki, a widow of the deceased. The said widow deposed that the deceased died on 10th March 2005 and not on 16th March 2005 as alleged by the plaintiff. She further stated that the deceased was survived by the following:

1. **Truphena Nyaboke – 1st wife**
2. **Thomas Rioki – son**
3. **George Rioki – son**
4. **Naftali Rioki – son**

5. **Florence Rioki – daughter**
6. **Josephine Rioki – daughter**
7. **Grace Rioki – daughter**
8. **Isabella Rioki – daughter**

All the above are from the deceased's first house.

The second house had the following survivors:

1. **Hellen Moraa Rioki – 2nd wife**
2. **Simeon Rioki – son**

Hellen Moraa further averred that the plaintiff had not obtained consent of the other beneficiaries before she filed the suit. She also contended that the plaintiff did not have capacity to sue as her mother had not renounced her right to take out letters of administration of the deceased's estate. Besides, following the death of the deceased his two widows and the rest of the family members agreed on the mode of distribution of the deceased's estate whereby the land at Bokiambori was to be shared as per the demarcations that had been made by the deceased, the land at Biego was to go to the first house and the land at Bokeire (the suit land) was to go to the second house. Hellen had allowed the defendant to move into possession of the suit land.

Mr. Omariba for the plaintiff and Mr. Soire for the defendant made brief submissions which I have considered.

From the undisputed evidence on record the suit land was registered in the name of the deceased who died on 10th of March 2005 as shown in the certificate of death, a copy whereof is annexed to the affidavit of Hellen Moraa Rioki. The suit land therefore forms part of the deceased's estate. No letters of administration of the deceased's estate have been applied for by anyone. The deceased died intestate and it is evident that he was polygamous. In the absence of any confirmed grant of representation, none of the beneficiaries of the deceased's estate has power to dispose of any part of the deceased's estate or even allow any outsider to take possession of the same.

The proposed mode of distribution of the deceased's estate as suggested by Hellen Moraa has no legal basis and the same can only be done after grant of letters of administration and confirmation of the same has been made by the court. The plaintiff sought and obtained letters of administration Ad Litem for purposes of filing this suit only. She therefore has capacity to institute the suit, just like any other beneficiary would have moved the court for such authorization. However, that limited grant does not vest upon her any other power over the estate of the deceased. Her actions are only meant to safeguard the deceased's estate.

For these reasons I allow the plaintiff's application as prayed.

DATED, SIGNED AND DELIVERED AT KISII THIS 19TH DAY OF MAY, 2009.

D. MUSINGA

JUDGE.

19/5/2009

Before D. Musinga, J.

Mobisa – cc

N/A for Applicant

Mr. Soire for Respondent

Court: Ruling delivered in open court.

D. MUSINGA

JUDGE.