



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU**

**Succession Cause 293 of 2003**

**DORIS CIAMBAKA JAPHET ..... PETITIONER**

**RULING**

The petitioner/applicant obtain a temporary grant of representation on 28<sup>th</sup> January 2004 and on 28<sup>th</sup> April 2005 brought summons for the confirmation of the same. The summons has not been heard because in the meantime the petitioner/applicant has also filed an application seeking orders to restrain the two respondents in this application from intermeddling with the deceased's estate until the grant is confirmed.

She contends that the respondents have encroached on the land parcel No. ITHIMA/NTUNENE/1435, registered in the name of the deceased, and have begun construction of structures thereon without any colour of right or authority. That if the two respondents are not restrained the said property stands to suffer harm and damage. In their joint replying affidavit the respondents have denied intermeddling with or constructing on parcel of land No. 1435.

They maintain that their activities are confined to parcel of land No. ITHIMA/ANTUA-MBUI/5917, which is adjacent to No. 1435, both in separate adjudication sections. On 30<sup>th</sup> January 2006 this court (Sitati, J) ordered the District Land Registrar and the District Land Surveyor, Meru North District to visit the two parcels of land in question to ascertain the extent of the construction complained of and file a report.

The first report was found inadequate hence the second report dated 26<sup>th</sup> July 2006. That report is conclusive that the two parcels are located in two different registration areas. That No. 1435 measures 0.04 Ha while No. 5917 measures 0.065 Ha which tally with the measurement on the ground. The report also confirms that the construction in question is taking place on No. 5917 and NOT on No. 1435. That should lay this dispute to rest.

The application dated 14<sup>th</sup> December, 2005 has no merit and is dismissed with costs to the respondents.

Dated and delivered at Meru this 6<sup>th</sup> ...day of ...June... 2008.

**W. OUKO**

**JUDGE**