

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE 223 OF 2008

IN THE MATTER OF THE ESTATE OF WILFRED NTARANGWI M'BARUI (DECEASED)

JOYCE MUNYUNGU PETITIONER

VERSUS

ISAAC M'BARUI 1ST RESPONDENT

JOHN KABERIA 2ND RESPONDENT

KANAMPIU M'BARUI 3RD RESPONDENT

RULING

The only issue in the instant application is whether the applicant is competent to bring the same and seek to restrain the respondents from intermeddling with the estate of her deceased husband. The applicant has filed this cause for a grant of representation in respect of her late husband's estate. While the cause is pending, the instant application has been brought on the grounds that the respondents who are related to the applicant have invaded the deceased person's only parcel of land and harvested miraa. That unless they are restrained the applicant and her children stand to suffer irreparable damage.

On behalf of the respondents the 2nd respondent has sworn a replying affidavit in which it is admitted that the applicant is indeed the widow of the deceased. They, however, contend that it is the applicant who intends to disinherit some of the dependants. Learned counsel for the respondent submitted from the bar that although the court has inherent jurisdiction under section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules, it (the court) cannot grant the orders sought by the applicant unless she has obtained grant of representation.

Counsel for the applicant has submitted that the inherent powers of the court in section 47 of the Law of Succession Act cannot be taken away and that the court can grant the orders sought in this application even in the absence of letters of administration.

I have considered these arguments as well as the case of **Re Katumo and another**, (2003) 2 EA 509, cited by counsel for the respondent. The applicant, as I have stated, seeks to restrain the respondents from intermeddling with the estate of the deceased, in particular parcel of land No. 9014 Upper Athiru Gaiti Adjudication section, which has been confirmed by the District Land Adjudication and Settlement Officer, Igembe/Tigania District, to be recorded under the name of the deceased.

Dealings with an estate of a deceased person are regulated by the Law of Succession Act, through which a dependant or dependants apply to be issued with a grant of representation before any dealings can be permitted. Any dealings before the issuance of the grant of representation would amount to intermeddling which is a punishable offence under the Law of Succession Act.

Such an intermeddler is also answerable to the rightful executor or administrator. Section 46 of the Law of Succession Act enjoins the police, chiefs or administrative officers to preserve the estate of a deceased person in their local areas before the grant is issued. In other words, before the grant is issued to

dependant, he/she cannot bring an action in respect of the estate of the deceased. See **Virgina Edith Wamboi Otieno V. Joash Ochieng Ongo and Omolo Siranga** (1982 – 1988) IKAR 1049.

Although in the present cause, the applicant has obtained a temporary grant, the instant application was filed before the grant was issued. At the time the application was brought, the applicant lacked competence to do so. She could only proceed under the provisions of section 45 of the Law of Succession Act by making a report of the respondents' intermeddling with the estate to the police. The court of course has inherent powers to make such orders under the Law of Succession Act as may be expedient. But in exercising those powers the court has to do so within the law.

For these reasons, the application fails and is dismissed. I make no orders as to costs this being a family matter.

Dated and delivered at Meru this 3rd day of October 2008.

W. OUKO

JUDGE