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REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT KITALE.

PROBATE AND ADMINISTRATION NO. 79 OF 2000.

YOHANA MUINDI MUSEBE :::::::::::::::::::: DECEASED.

AND

MERTON KISIANYANI MUINDI)

MOSES KHISA MUHINDI) :::::::::::::::::::: PETITIONERS.

R U L I N G.

The main suit in this matter was concluded on 19/11/2002 when the High Court distributed the estate of the deceased one Yohana Muindi Musembe in P & A No. 79/00.

There was no appeal against the Judgment. There hasn't even been any application for review of the said orders.

Two years down the line the beneficiaries have yet to subdivide the said properly as ordered by the court.

The survey is said to have been stopped by some of the beneficiaries.

The applicants herein have now moved the court vide a chamber summons dated 21/4/2004 which is filed under a certificate of urgency. The petitioners are asking the court to issue an order restraining the respondents from interfering with the applicant's use and possession of (8) eight acres on parcel No. 194 Kipsoen Settlement scheme pending and survey by the District Surveyor.

They have not told the court if and when the said survey will be done.

They claim that the respondent have interfered in their use of the 8 acres.

I have heard both consents in their submissions in this matter. I have also considered the contents of the affidavits for and against the application.

In my view, the matter before me is very straightforward indeed and that is why this ruling will be very short.

It is not disputed that the land has not been surveyed. The 8 acres parcel which the applicant want the respondents restrained from interfering in is amorphous on the ground. It has not been surveyed; it is not beacons and so it doesn't even have an LR number by which it can be identified.

Instead of bringing to court applications for restraining orders, the applicants should sit down with the others and agree on how the survey should be carried out. This will sort out their problems once and for all.

Let the parties execute the court judgment and live happily evenafter.

This application is not meritorious. The orders sought should not be issued, as it will be difficult to comply with them on the ground. The court does not give orders in vain.

For the foregoing reasons, I dismiss the application dated 21/4/2004 with costs to the Respondents.

WANJIRU KARANJA.

AG. JUDGE.

3/6/2004.

**DELIVERED AND SIGNED THIS DAY OF JUNE, 2004 AT
KITALE IN PRESENCE OF**