



REPUBLIC OF KENYA

IN THE HIGH OF KENYA

AT MERU

SUCCESSION CASUE NO.225 OF 2000

MARETE MUCHAI.....PETITIONER/APPLICANT

VERSUS

MURITHI MITAMBO.....1STRESPONDENT

MICHAEL KIAMBI MITAMBO.....2ND RESPONDENT

MWENDA MITAMBO.....3RD RESPONDENT

KINANU MITAMBO.....4TH RESPONDENT

MBAABU MITAMBO.....5TH RESPONDENT

RULING

1. By summons under certificate of urgency dated 7th September 2020 pursuant to Section 47 of the Law of Succession Act, Rule 73 of the Probate and Administration Rules and Order 45 Rule 1 of the Civil Procedure Rules, the applicant seeks, in the main, an order that the respondents, their family members or leases do render vacant possession and vacate parcel of land number **ABOGETA/U-KIUGONE/xxx** and in default an eviction order to issue against them to be enforced by the **OCS, MURUNGURUNE** Police Station.

2. The grounds upon which the application is premised are set out in the body of the application and supporting affidavit of Marete Muchai, the applicant herein, sworn on 07/09/2020. It is contended in that affidavit that the respondents who are in occupation of **ABOGETA/U-KIUGONE/xxx** (hereinafter referred to as the suit property) have adamantly refused to render vacant possession to the applicant in accordance with the decision made by the court on 04/12/2019 directing that the suit property goes wholly to the applicant. It is additionally contended that the applicant will suffer irreparable loss and damage if the orders sought are not granted and the judgment herein shall be rendered nugatory it being stressed that the court is enjoined to exercise its inherent powers as envisaged under section 47 of the Law of Succession Act, Rule 73 of the Probate and Administration Rules and Article 159(2) of the Constitution to ensure the ends of justice are met and to render substantive justice.

3. On 03/11/2020, Mr. Nyenyire for the 1st respondent was granted 14 days to file a replying affidavit but the affidavit came to be filed on the 04/02/2021. the contention in that affidavit is that he has lived and developed the land which he considers ancestral because even his parents 'grave sit upon it and he would thus suffer great loss if made to vacate. I see the position taken to be that he challenges the determination by the court dated 04/12/2019 not by legally established way. I am tempted to think that the respondents take the view that the determination is wrong and they wish not to honour it. In my view, that affidavit offers no reasons why orders for vacant possession can't be issued.

4. Directions were on 12/05/2021 given to the effect that the application would be heard orally pursuant to which directions both Mr. Nyenyire for the 1st respondent and Mr. Muthomi for the Applicant opted to offer no submissions and wholly rely on the papers filed.

5. The application is grounded upon Section 47 of the Law of Succession Act as well as Rule73 of the Probate and Administration Rules which reserves the inherent powers of the court to make such orders as may be expedient for the ends of justice to be met. I consider the provisions to donate to court every power to facilitate the end of justice including eviction orders if the circumstances of the case warrant it.

6. There is a clear determination by the court dated 4th December 2019 that vests upon the applicant the exclusive property rights over the suit land. That right is not shared with but excludes any claim by the respondents who participated in the proceedings leading to the determination but who however persist in the wrongful occupation thereof is in contravention of the adjudication by the court. This is

therefore an apt situation for the invocation of the inherent powers of the court to do justice and to stamp the court's authority that court orders be obeyed by all and sundry. On the facts disclosed and not controverted by the respondents only a further court order directing delivery of vacant possession will enable actualization of the court orders of 4.12.2019 so that a successful litigant reaps and enjoys the fruits of litigation.

7. Flowing from the foregoing reasons, I find and hold that the respondents have no pedestal at all to stand upon in resisting the application, which application I hold to be wholly merited.

8. It is therefore ordered that the respondents, by themselves, family members, assignees or any other person claiming title or any right under any of them, howsoever, shall within 30 days from the date hereof, vacate and render vacant possession of the suit property being, ABOGETA/U-KIUGONE/xxx, to the applicant unconditionally. On default, all shall be forcefully evicted from the suit land. Such eviction be overseen by, the officer Commanding station, Murungurune police station, to ensure that public order is not breached.

DATED, SIGNED AND DELIVERED AT MERU BY MS TEAMS THIS 4TH DAY OF JUNE 2021

PATRICK J O OTIENO

JUDGE

In presence of

Mr. Muthomi for the Applicant

Mr. Nyenyire for the Respondent

PATRICK J O OTIENO

JUDGE