



REPUBLIC OF KENYA

IN THE HIGH COURT KENYAAT MERU

(CORAM: CHERERE-J)

SUCCESSION CAUSE NO 308 OF 2010

IN THE MATTER OF THE ESTATE OF M'IMIRONGO M'UTHAKA (DECEASED)

BETWEEN

ANDREW MURIUKI M'UTHAKA.....1ST PETITIONER

PATRICK KAMENGU.....2ND PETITIONER

JOHN MUTUMA ROBERT.....3RD PETITIONER

AND

SUSAN NKATHA.....1ST OBJECTOR

DAVID MUGAMBI.....2ND OBJECTOR

LUCY KAMAMI.....3RD OBJECTOR

FREDRICK KABERIA.....4TH OBJECTOR

AND

IN THE MATTER OF AN APPLICATION

BY

CELINA NKIRINA SAMUEL.....1ST APPLICANT/ INTENDED INTERESTED PARTY

DANIEL KIRIMI MUTUA.....2ND APPLICANT/ INTENDED INTERESTED PARTY

RULING

Introduction

1. By a Certificate of Confirmation of Grant dated 14th February, 2019, deceased's estate was distributed as follows:

- 1) Kaura Robert Ithima/Antuambui/5565(0.05 Ha)
- 2) Judy Robert Ithima/Antuambui/1429(0.04 Ha)
- 3) Charles Robert Ithima/Antuambui/3012(0.07 Ha) (To Spouse and Children)
- 4) John Mutuma & Julius Ng'olua Ithima/Antuambui/5563(0.11 Ha)

5) Alexander Mithika & Isaiah Muriki Ithima/Antuambui/3012(0.23 Ha)

6) Jacinta Kendi Robert Ithima/Antuambui/5596(0.08 Ha)

7) Lucy Kawira Robert Ithima/Antuambui/1239(0.04 Ha)

8) Rosaline Kinya Ithima/Antuambui/1226(0.04 Ha)

9) Mary Mwendwa Ithima/Antuambui/1224(0.07 Ha)

10) Lucy Kamami Ithima/Antuambui/1212(0.04 Ha)

11) Fredrick Kaberia Ithima/Antuambui/1451(0.03 Ha)

12) Susan Nkatha Ithima/Antuambui/1296(0.099 Ha)

13) David Mugambi Ithima/Antuambui/1295(0.03 Ha)

14) Silveria Kathoni Ithima/Antuambui/1286(0.07 Ha) (Or her survivors to share equally)

15) Beatrice Robert Ithima/Antuambui/1257(0.04 Ha) (Or her survivors to share equally)

16) Teresia Tirindi Ithima/Antuambui/3187(0.81 Ha)

17) Ithima/Antuambui/3057 (3.00 Ha) to be shared equally among deceased person's sons from 1st and 3rd house and where deceased those present to hold in trust for the children.

i. Charles Gitongo (Deceased)

ii. Patrick Kamenchu

iii. Joseph Kinyua (Deceased)

iv. Isaiah Muriuki (Deceased)

v. John Mutuma

vi. Mark Ng'olua (Deceased)

18) Ithima/Antuambui/3057 (3.00 Ha) to be shared equally among deceased person's sons from the 3 houses

i. Charles Gitongo (Deceased)

ii. Patrick Kamenchu

iii. Joseph Kinyua(Deceased)

iv. Isaiah Muriuki(Deceased)

v. John Mutuma

vi. Mark Ng'olua(Deceased)

vii. Tirindi Robert

19) Plot at Laare Market jointly to

i. Terisia Kainda

ii. Tirindi Robert

iii. Susan Nkatha

iv. Lucy Kamami

20) The shares are to go to the nominees as per the records in the institutions where they are held, otherwise if no nominees then they shall be distributed equally amongst beneficiaries.

21) Monies held at different banks in the names of the deceased should be shared equally among the deceased persons' children and surviving widow upon establishing particulars of the account and banks.

2. By chambers summons dated 09th December, 2019, Susan Nkatha (1st Objector) applied to have Daniel Gitonga Mutua and Gitonga evicted from Plot at Laare Market so that it could be distributed to her and 4 others as ordered by the court.

3. By a ruling dated 27th April, 2020, the application was allowed on the grounds that the persons sought to be evicted are not beneficiaries of the estate of the deceased and it had not been shown that the court gave them authority to occupy the property in question.

4. By summons dated 16th February, 2021, the Applicants seek to be enjoined as interested parties' on the ground that an order for their eviction was issued without affording them a hearing. The 1st Applicant has exhibited a lease agreement dated 01.01.2018 between her and one Martha Wanja Gitonga whereas the 2nd Applicant has exhibited a lease agreement dated 01.03.2017 between her and one Patrick Kamenchu Robert.

5. Susan Nkatha (1st Objector) by her replying affidavit avers that notices dated 05.11.2019 were issued to the Applicants requiring them to enter into lease agreements with the beneficiaries of the suit property but Applicants ignored and only moved to court on 18th February, 2021 long after they were evicted on 02.09.2020 and the suit premises leased by the rightful heirs.

6. The Respondent faults the Applicants for filing this application after an application filed in MERU ELC NO. 41 OF 2020 challenging their eviction was dismissed on 14th December, 2020.

Analysis and determination

7. I have considered the application in the light of the affidavits on record.

8. It is not in dispute that the subject matter of this application which is the eviction of the Applicants from the suit property is also the subject matter in MERU ELC NO. 41 OF 2020.

9. The *sub judice* rule is codified in **Section 6** of the **Civil Procedure Act**, (cap 21) as follows:

“No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same time, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.”

10. The *sub-judice* rule is meant to prevent courts of concurrent jurisdiction from contemporaneously entertaining trial of two parallel suits in respect of the same subject matter. For it to apply, it is necessary that issues in the subsequent suit be also directly and/or substantially the same issues in the other suit. The remedies sought should also broadly be similar.

11. It is worthy to note that the Applicants filed this application after they lost a similar application in MERU ELC NO. 41 OF 2020. This case is a clear repudiation and negation of the salutary aims of the *sub-judice* bar.

12. This court declines to allow the Applicants to improperly and impermissibly re-litigate on a matter pending before another court.

13. Further to the foregoing, Applicants are not beneficiaries of the estate of the deceased but intermeddlers with no right of protection under the Law of Succession Act.

14. In the end, I find that the Summons dated 16th February, 2021 is an abuse of the court process and the same is dismissed with costs to the Objectors/Respondents.

DATED AT MERU THIS 15TH DAY OF JULY 2021

T. W. CHERERE

JUDGE

Court Assistant - Morris Kinoti

For Applicants - Mr. Kimani for Macharia Kimani Advocates

For Petitioners - N/A for Kobia Michubu & Co. Advocates

