



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 195 OF 2003

IN THE MATTER OF THE ESTATE OF THE LATE M'IKIUNGA M'RARIA (DECEASED)

M'RIMBERE M'IKIUNGA.....APPLICANT

VERSUS

MUTHOMI M'IKIUNGA M'ITUNGA.....1ST RESPONDENT

JACOB MUGAMBI.....2ND RESPONDENT

JOSEPH MWITIL.....3RD RESPONDENT

PHINEAS GITONGA.....4TH RESPONDENT

RULING

1. Before me is a Summons dated 25/9/2019 brought under **Rule 49 of the Probate and Administration Rules and sections 82 and 83 of the Law of Succession Act (“the Act”)**. The orders sought are to the effect that the respondents be evicted from the portions belonging to the applicant, viz, **LR. Kiirua/Ruiri/6368 – 6371** and instead be compelled to take occupation of **LR. Kiirua/Ruiri/6372** belonging to the 1st respondent.
2. The grounds upon which the application was predicated upon were enumerated in the body of the Summons and the supporting affidavit of **M'Rimbere M'Ikiunga** sworn on 25/9/2019. These were; that the grant had been rectified and confirmed on 29/9/2011; that the estate property had already been subdivided in terms of the certificate of confirmation into 5 portions, **LR. Kiirua/Ruiri/6368 - 6372** and titles issued in respect thereof; that the 1st respondent and his sons (the 2nd to 4th respondent) had refused to take occupation of their portion but had invaded the portions of the other beneficiaries.
3. When the application was served, the respondents replied with a Preliminary Objection to the effect that, this Court lacks jurisdiction to entertain the application. That the proper forum was the Environment and Land Court.
4. The Court directed the parties to file their respective submissions. As at the time of writing this ruling, only the applicant had filed his. In his submissions, he contended that under **section 83 of the Act**, the obligations of the administrator extends beyond the confirmation of grant. That an administrator is required to file with the Family Court an account of his administration of the estate 6 months after the confirmation of grant.
5. It was further submitted that, the administrator in this case was unable to complete the administration because the 1st respondent was frustrating that exercise. That the orders sought were meant to perfect the grant and settle the beneficiaries in their respective portions of land as ordered by this Court. The cases of **Re Estate of Alice Mumbua Mutua (Deceased) [2017] Eklr** and **Re Estate of Samuel Nyaga Chindano (Deceased) [2019] Eklr** were cited in support of those submissions.
6. No doubt, the jurisdiction of the Family Court is well settled under the Act and the Rules made thereunder. As held by Musyoka J in **Re Estate of Alice Mumbua Mutua (supra)**, that jurisdiction is limited to determining the assets of the deceased, the beneficiaries of the deceased and the distribution of the assets amongst the beneficiaries of the deceased and other persons beneficially interested.
7. That being the case, the Family Court's function only extends to facilitating the collection and preservation of the estate, identification of the beneficiaries and thereupon distributing the estate accordingly. Once the Family Court does so under the Act, it becomes *functus officio*.
8. This is so because, the provisions of other legislations kick in immediately after the confirmation of grant. For example, after the grant is confirmed and the certificate thereof issued, the process of transmission and issuance of the titles is governed by the **Land Registration Act**

and the **Land Act**. The **Law of Succession Act** has nothing to do with the perfection of the interests that inure from the confirmed grant. That is the preserve of other legislations.

9. The applicant referred to the case of **Re Estate of Justus Nyaga Chindano (supra)** in support of the contention that the Family Court has inherent jurisdiction under **Rule 73 of the Probate and Administration Rules** to entertain the present application. That decision concerned whether an order for removal of a caveat should be made. I believe that jurisdiction exists because, the confirmed grant cannot be effected without the estate title being clear.

10. In the present case however, titles have already been issued under the respective land legislation. The property no longer belongs to the estate of the deceased but to the beneficiaries who now hold proper titles therefor. That being the case, the Family Court's jurisdiction cannot be stretched that far.

11. The question to be answered in the present application is not who is entitled to what. Rather, it is whose title belongs to who and who is entitled to occupy which land. To my mind that is the preserve of the Environment and Land Court.

12. In view of the foregoing, I find the preliminary objection to be meritorious and I uphold the same.

13. Accordingly, the application dated 25/9/2019 is hereby struck out. This being a family matter, I will make no order as to costs.

It is so ordered.

DATED and DELIVERED at Meru this 3rd day of June, 2020.

A. MABEYA

JUDGE