



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**SUCCESSION CAUSE NO.117 OF 2001**

**IN THE MATTER OF THE ESTATE OF M'RIMBERIA BAICHU (DECEASED)**

**FRANCIS MURURU .....PETITIONER**

**BURIA M'RIMBERIA BAICHU..APPLICANT/OBJECTOR**

**-VS-**

**ROBERT MUREGA RIMBERIA .....RESPONDENT**

**R U L I N G**

1. By a Summons dated 11/08/2020, made under **Rule 73 Probate and Administration Rules Cap 160 Laws of Kenya and Article 159 (2) of the Constitution**, the applicant sought orders that the respondent do remove the illegal fence he had put around the applicant's share to enable the extended family do the surveying and final distribution; and that the respondent be restrained from digging trenches where rental homes had been constructed.

2. The grounds upon which the application was made were set out in its body and the supporting affidavit of **Buria M'Rimberia Baichu** sworn on 11/08/2020. **Parcel No. NYAKI/Mulathankari/170** which is the estate property was shared amongst the sons of the deceased whom the applicant is one of them. It is contended that the respondent, a son to the applicant, has chased the applicant and his daughter **Purity Nkatha** from the applicant's share and closed it off.

3. That on 5/08/2020, the respondent blocked the entrance with the intent of blocking the applicant and his daughter's access and had threatened to evict the tenants who were there. Moreover, the respondent had begun erecting a building in front of the houses of Purity while he well knew where the applicant has allocated him his portion.

4. The application was opposed vide the replying affidavit of **Robert Murega Rimberia** sworn on 25/08/2020. He deponed that the applicant had wrongly and irregularly enjoined him to these proceedings which he was not a party to. The applicant had been and continued to frustrate the efforts of the family members to devolve the estate of the deceased.

5. It was further deposed that the allegations made by the applicant were not true. It was his mother who fenced the homestead and blocked the many entrances to the home and left a gate to be accessed by everyone for security reasons. The respondent did not reside on the homestead but he has never heard any of the family members who reside thereon complain about not accessing the homestead. Moreover, he had not erected a building in front of his sister's house neither was he aware of any allocation of a share of the land to him by the applicant.

6. The application was also opposed vide a replying affidavit sworn by **Kinaitore Buria**, wife of the applicant, sworn on 25/09/2020. She reiterated what the respondent had deponed to. She added that the applicant deserted her and went to live in Kianjai. Her daughter Purity was not staying with her as well but had abandoned her three (3) children with her. She affirmed that she was the one who fenced the homestead and chased away the alleged purchasers who were threatening to gain access and start construction on the suit property. She confirmed that she was the one who was constructing the alleged houses but her husband was alleging that it was her son, the respondent.

7. This is a probate and administration court whose jurisdiction and function is well articulated in **the Law of Succession Act and the Probate and Administration Rules**. The court's jurisdiction was well put by Musyoka J in the case of **In re Estate of Alice Mumbua Mutua (Deceased) [2017] eKLR**, wherein he stated: -

**“It may be argued that the subject land is estate property and by dint of that fact the probate court would have jurisdiction thereon. The position is not as simple. The Law of Succession Act, and the Rules made thereunder, are designed in such a way that they confer jurisdiction to the probate court with respect to determining the assets of the deceased, the survivors of**

the deceased and the persons with beneficial interest, and finally distribution of the assets amongst the survivors and the persons beneficially interested. The function of the probate court in the circumstances would be to facilitate collection and preservation of the estate, identification of survivors and beneficiaries, and distribution of the assets.

Disputes of course do arise in the process. The provisions of the Law of Succession Act and the Probate and Administration Rules are tailored for resolution of disputes between the personal representatives of the deceased and the survivors, beneficiaries and dependants. However, claims by and against third parties, meaning persons who are neither survivors of the deceased nor beneficiaries, are for resolution outside of the framework set out in the Law of Succession Act and the Probate and Administration Rules.” (Emphasis added)

8. From the record, the asset that formed the estate of the deceased was identified as were the beneficiaries. The estate was subsequently distributed and a confirmed grant issued. A dispute has now arisen between the applicant and the respondent, who is his son regarding the applicant’s share which was distributed to him from the estate. According to the applicant, he alleges a lot of interference on his share by his son at the expense of the other family members.

9. This cause relates to the father of the applicant and grandfather of the respondent. The respondent was not party to the proceedings neither was he identified as a beneficiary or dependant of the deceased. In this regard, the claim the applicant has brought before this court is against a third party. This court is tasked with the obligation of solving disputes between personal representatives of the deceased and the survivors, beneficiaries and dependants of the deceased. The dispute herein does not fall under any of the said categories.

10. In this regard, I hold that the dispute does not lie within the jurisdiction of this court. It lies elsewhere.

11. Accordingly, the application is unmeritorious and is hereby dismissed with costs to the respondent.

**SIGNED** at Nairobi.

**A. MABEYA, FCIArb**

**JUDGE**

**DATED and DELIVERED Meru this 10<sup>th</sup> day of December, 2020.**

**JUDGE**