



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 119 OF 1993

IN THE MATTER OF THE ESTATE OF M'ITURUCHIU M'RIMBERIA (DECEASED)

SAMUEL M'IKIUNGU.....PETITIONER

VERSUS

PETER MWITI..... RESPONDENT

RULING

1. By summons expressed to be brought pursuant to Section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules and all other enabling provisions of the law, the applicant has sought the following orders

- 1) That the honorable court be pleased to certify the application with utmost urgency and hear on a priority basis
- 2) That the honorable court be pleased to issues an order of eviction against the respondent Peter Mwiti and his agents or anyone claiming through him ordering that he vacate from land parcel number KIIRUA/NAARI/MAITEI/473 immediately and in default be evicted forcefully
- 3) That the OCS Kiirua Police Station ensure compliance with the order issued above by providing security
- 4) That costs of this application be provided for.

2. This application is supported by the grounds on the face of it and an affidavit sworn by Samuel M'ikungu. The applicant herein an administrator of the deceased estate, avers that judgement was delivered on 6th December 2018 and the court declared that the respondent is not a beneficiary of the estate and has no rights over it. However the respondent is in occupation of part of the estate being parcel number KIIRU/NAARI/MAITEI/473 and therefore it is impossible to complete administration as per the confirmed grant. He served the respondent with a notice to vacate but he refused to vacate rendering necessary a court order.

3. I have carefully considered the application before me which has been brought under section 47 of the law of succession act and rule 73 of the probate and administration rule which gives power to this court to entertain any application and determine disputes under the Succession Act.

4. The applicant herein has accused the respondent of intermeddling with the estate of the deceased. Section 45 of the law of Succession Act provides in relation to intermeddling that

“Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.”

5. In BENSON MUTUMA MURIUNGI vs. C.E.O. KENYA POLICE SACCO & ANOTHER [2016] eKLR the court observed that:

“Whereas there is no specific definition provided by the Act for the term intermeddling, it refers to any act or acts which are done by a person in relation to the free property of the deceased without the authority of any law or grant of representation to do so. The category of the offensive acts is not heretically closed but would certainly include taking possession, or occupation of, disposing of, exchanging, receiving, paying out, distributing, donating, charging or mortgaging, leasing out, interfering with lawful liens or charge or mortgage of the free property of the deceased in contravention of the Law of Succession Act. I should add that any act or acts which will dissipate or diminish or put at risk the free property of the deceased are also acts of intermeddling in law. I reckon that intermeddling with the free property of the deceased is a very serious criminal charge for which the person intermeddling may be convicted and sentenced to imprisonment or fine or both

under section 45 of the Law of Succession Act. That is why the law has taken a very firm stance on intermeddling and has clothed the court with wide powers to deal with cases of intermeddling and may issue any appropriate order(s) of protection of the estate against any person.”

6. The respondent herein has occupied the free property of the deceased which is in contravention of the section 45 of the said Act. Consequently, I find in favor of the Applicant and in pursuant of an order of eviction issued in Meru CMC C.C. No. 791 of 1993 and in pursuit of Judgment of this court delivered on 6.12.2018 the OCS Kiirua Police Station is hereby directed to provide security while the orders of eviction from LR KIIRUA/NAARI/MAITEI/473 are being executed.

7. The Respondent shall bear costs of application.

HON. A.ONG'INJO

JUDGE

RULING DELIVERED, DATED AND SIGNED IN COURT ON 9TH MAY 2019.

In the presence of:

C/A: Mr Kinoti

Ms Mutuma Wanjohi for Petitioner

Objector:- Mr Murango holding brief for Ringera for Respondents.

HON. A.ONG'INJO

JUDGE