



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**SUCCESSION CAUSE NO. 221 OF 2004**

**IN THE MATTER OF THE ESTATE OF MURIRA KARIGICHA (DECEASED)**

**HENRY KUBAI MURIRA.....1<sup>ST</sup> PETITIONER**

**DAVID MWIRIGI MURIRA.....2<sup>ND</sup> PETITIONER**

**WILSON KIMATHI MURIRA.....3<sup>RD</sup> PETITIONER**

**VERSUS**

**MICHEAL MUTWIRI M' ICHUNGE.....1<sup>ST</sup> PROTESTOR**

**JACOB MBAABU KIRERA.....2<sup>ND</sup> PROTESTOR**

**RULING**

1. On 19<sup>th</sup> December 2018 this Honourable court delivered its judgement distributing the estate of the deceased amongst its beneficiaries. A rectified Confirmation of grant was issued on similar date.

2. **Maria Karimi Murira**, widow of the deceased, has now applied for Orders that this Honourable Court directs the Ocs Timau Police Station to provide security during the subdivision of **Plot No. Timau Settlement Scheme/1**.

3. She avers that on 19<sup>th</sup> March 2019 they tried to access the aforesaid land in Order to carry out physical survey and subdivision thereof in accordance with the confirmed grant but they were turned away and violently chased away with pangas. She therefore finds it necessary that this Honourable Court provides security during the subdivision exercise.

4. The same was responded to by the 1<sup>st</sup> petitioner who averred that he has been living on the premises since 1964. That there is a pending civil application in Nyeri Civil Application No. 3 of 2019 and there is a high likelihood that the Orders sought may conflict with the Orders of the appellate Court. That the applicant has no locus standi since she has no letters of administration in respect to the estate of the deceased herein. Her advocates seek to come on record yet there is no notice of change filed. Lastly he averred that the applicant is only keen in displacing the entire family to a completely different area which will be prejudicial on the part of the Respondent.

**ANALYSIS AND DETERMINATION**

5. I have carefully re-looked at the trial Courts proceedings. On 9<sup>th</sup> November 2009 Grant of letters of Administration were issued to **Henry Kubai Murira, David Mwirigi Murira, Wilson Kimathi Murira, Wilson Kimathi Murira, Murira Karimi Murira and Silveria Kanore Murira**. The applicant herein was represented by Kiogora Arithi & Co. Advocates and also by Mwangi E G & Co. Advocates. The latter conducted the hearing herein and has also filed this application. No objection was raised during the hearing that these advocates are not properly on record. The nature of the application before me is in execution of the grant herein and concerns all beneficiary and persons beneficially interested. In any case, the law; article 159 of the Constitution, section 47 of the Law of Succession Act and rule 73 of the Probate and Administration Rules demand upon courts of law to serve substantive justice. The objection on legal counsels would therefore not make the application herein incompetent. I will determine it on merit.

6. In the rectified Certificate of Confirmation of grant the Respondent herein is granted 0.67 acres. The court in making this determination had considered that the applicant had already sold part of the estate of the deceased hence the residual part of his property is the 0.67 acres.

7. The averments by the Respondent were therefore not only incorrect but misleading to this Honourable Court. The applicant is an administrator as shown above. The Respondent's claim that he is being chased away from the property is contrary to the facts and decision of the court.

8. Having said the foregoing, I note with trepidation that parties seek to disobey the law if it did not go their way. The law does not serve personal desires of an individual but rather legitimate expectation and rights of parties. Here I am compelled to state that court orders must be obeyed whether a party agrees or disagrees with them. Only a stay of orders will stop implementation of a court order. Filing appeal alone does not operate as stay of orders appealed from. And where disobedience is shown the court has wide and coercive powers to deal with the disobedience and compel compliance. I find this application to be meritorious and I therefore allow the same.

9. The upshot of this Ruling therefore is;

**(i) The Ocs Timau Police Station is hereby directed to provide security during the subdivision of Plot No. Timau Settlement Scheme 1.**

**Dated signed and delivered in open court this 4<sup>th</sup> day of June 2019**

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**F. GIKONYO**

**JUDGE**

**IN PRESENCE OF**

M/S Matiri for Otieno for 1<sup>st</sup> petitioner

Kiogora for 2<sup>nd</sup> petitioner

E.G Mwangi for 1<sup>st</sup> and 2<sup>nd</sup> objector

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**F. GIKONYO**

**JUDGE**