



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 614 OF 2015**

**(FORMERLY CHUKA SUCCESSION CAUSE NO. 16 OF 2015)**

**IN THE MATTER OF THE ESTATE OF THE LATE THAMBU BAIMUNDI (DECEASED)**

**DAVID NJERU MUGWIKA.....APPLICANT**

**VERSUS**

**PURITY KAARI GILBERT.....1<sup>ST</sup> RESPONDENT**

**ROSEMARY KIRUMI.....2<sup>ND</sup> RESPONDENT**

**R U L I N G**

1. This cause relates to the estate of the late Thambu Baimundi (deceased) who died on unknown date domiciled at Ganga Location. The estate of the deceased in this cause comprises that parcel of land known as **MWIMBI/S. MUGUMANGO/41** and a grant of representation was earlier granted to **DAVID NJERU STANLEY** on 21<sup>st</sup> October, 2015 but later the same was revoked by this court through a ruling delivered on 9<sup>th</sup> October, 2017. **JANET ITHIRU** was appointed the administratrix of the estate of the deceased herein and granted liberty to apply for confirmation before the expiry of the statutory period given the age of this cause as well as her own age which this court found to be advanced.

2. This court has been moved by the administratrix for confirmation of grant though no date has been taken for a pending Summons for confirmation of Grant dated 22<sup>nd</sup> January, 2018. Now David Njeru Mugwika, the applicant herein has moved this court through summons dated 23<sup>rd</sup> November 2017 for the following orders/reliefs namely:-

*(i) That this honourable court be pleased to restrain the purity Kaari Gilbert (the 1<sup>st</sup> respondent herein) whether by herself, her agents, assigns, servants and employees from entering, remaining, occupying and or in any manner whatsoever and in interfering or intermeddling with the estate of the deceased herein pending the hearing and determination of this cause.*

*(ii) That this honourable court be pleased to restrain Rosemary Kirumi (the 2<sup>nd</sup> respondent) by herself, her agents, assigns or anyone acting on her behalf from leasing and/or permitting the 1<sup>st</sup> Respondent from entering on land parcel No.MWIMBI/MUGUMANGO/41 pending distribution by this court.*

*(iii) That the honourable court do grant/issue any other relief deemed just and expedient.*

*(iv) That costs be provided for.*

3. The grounds upon which this application has been brought as listed on the face of the application are as follows:-

*a) That the applicant is a dependant of the deceased by virtue of being a son to the deceased.*

*b) That the 1<sup>st</sup> Respondent is a purchaser who purchased from the 2<sup>nd</sup> Respondent.*

*c) That the applicant is in occupation of the subject parcel.*

*d) That the 1<sup>st</sup> Respondent being a purchaser and her title having been cancelled is just but a trespasser in the estate of the deceased.*

***e) That permitting the 1st Respondent to enter and cultivate in the deceased's parcel. the Respondents are guilty of intermeddling with the estate of the deceased.***

4. In his Supporting Affidavit sworn on 23<sup>rd</sup> November, 2017 the applicant has cited a ruling delivered by this court on 9<sup>th</sup> October, 2017 and deposed that the 1<sup>st</sup> Respondent is an intermeddler who has destroyed his crops on the estate. He further deposes that he reported the matter at Ntumu Police Station vide **OB No.17/9/11/17**. The applicant has further cited the provisions of **Section 45** of the **Law of Succession Act** and accused the 1<sup>st</sup> Respondent for intermeddling. He has contended that the 1<sup>st</sup> Respondent should be evicted from the estate.

5. The Respondents have opposed this application through a Replying Affidavit by the 2<sup>nd</sup> Respondent sworn on 5<sup>th</sup> December, 2017 and written submissions made through learned counsel I.C Mugo and Co. Advocate. The 2<sup>nd</sup> Respondent has contested the applicant's claim of dependency deposing that the applicant is not a son of the deceased herein. She has also accused the applicant for intermeddling on the estate deposing that she also booked a complaint at same Ntumu Police Station. The 2<sup>nd</sup> Respondent contends that the applicant has no known interest on the estate because in her view he is not a beneficiary. The Respondents submit that the applicant has never been in occupation of the estate and cannot therefore be heard to say that he has mature trees growing on the estate. The Respondents have denied that the 1<sup>st</sup> Respondent is intermeddling and have submitted that she removed the properties from the estate when her title was cancelled by court. They further argue that the 1<sup>st</sup> Respondent has been from time to time been going to the 2<sup>nd</sup> Respondent only to help her in the farm and that to her this cannot be termed as intermeddling.

6. This court has considered this application and the response made. It is quite clear from the ruling delivered by this court on 9<sup>th</sup> October, 2017 that the rights or the status of the applicant in regard to the estate of the deceased herein has not been ascertained. It is also true that while the status of the 1st Respondent was ascertained which was the fact that she has no legal or legitimate claim on the estate, the interest and status of the 2<sup>nd</sup> Respondent has not been ascertained. That issue will be determined during the confirmation and distribution of the estate herein.

7. The administratrix **JANET ITHIRU** also the daughter of the deceased was given the liberty to move this court for confirmation of grant before the expiry of the six months due to the age of this cause and her own age but apart from filing the summons for confirmation of grant, she has not taken a date for the same. In my view the current quarrels and squabbles will be brought to a rest once this court ascertains who the beneficiaries of the estate are and what portion should each beneficiary get.

8. The current application will not be assistance to anyone related to the deceased herein. The 2<sup>nd</sup> Respondent contends that the applicant is not a beneficiary to the estate and this court finds that it would be premature for it to determine that issue without giving parties a chance to make representations about it. The administratrix has also not complained that there is intermeddling in the estate of deceased herein.

9. In the premises this court considers it just and fair to direct that summons for confirmation of grant be listed for hearing forthwith so that the children of the deceased and any other interested party can be heard with a view to determination on the distribution of the estate, in that regard I direct that a date for confirmation be listed for hearing forthwith and on priority. Any party aggrieved by the proposed mode of distribution can file a protest. In the meantime, I direct that status quo in the estate be maintained pending the distribution of the estate to the lawful dependants/beneficiaries. I make no order as to costs at this stage.

**Dated, signed and delivered at Chuka this 14<sup>th</sup> day of May 2018.**

**R.K. LIMO**

**JUDGE**

**14/5/2018**

Ruling dated delivered in the open court in the presence of Mugo for Respondents and Kijaru for the applicant.

**R.K. LIMO**

**JUDGE**

**14/5/2018**