



**REPUBLIC OF KENYA**

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

**PROBATE & ADMINISTRATION CAUSE NO. 629 OF 2014**

**IN THE ESTATE OF JOSEPH GEORGE NGATIA.....(DCD)**

**AND**

**IRENE MUTHONI GEORGE.....1<sup>ST</sup> PETITIONER**

**CHARLES NGATIA GEORGE.....2<sup>ND</sup> PETITIONER**

**EPHANTUS GACHOKI GEORGE.....3<sup>RD</sup> PETITIONER**

**AND**

**MARGARET NJOKI MUTHIL.....OBJECTOR/APPLICANT**

**RULING**

The objector Margaret Njoki Muthii brought an application by way of Chamber Summons seeking an order that she be allowed to construct a house on Land Parcel No. Mutira/Kangai/1937 which belongs to the deceased herein until the objection and entire cause is heard and determined. It is based on the ground that she has been directed to vacate the land of one Mitaru Ngatia where she has been living. The application is also supported by her affidavit sworn on 19/4/17.

She avers that she was living on land parcel No. Mutira/Kangai/1937 before the deceased died and that the 1<sup>st</sup> & 3<sup>rd</sup> petitioners demolished her house rendering her and her children homeless. She was allowed to settle on the land of Mitaru upto January 2017 and she has been directed to vacate the land. She prays that she be allowed to construct a temporary structure pending the determination of the objection.

The petitioners opposed the application and in a replying affidavit sworn by Ephantus Gachoki George deponed that the applicant is a stranger to the estate. That the issue is pending before this court and since the prayer sought is final in nature it is pre-mature and would prejudice the hearing.

I have considered the application. The objector filed an objection on 08/07/2015 on ground that she has been excluded together with her children and other children of the 1<sup>st</sup> and 2<sup>nd</sup> wives of the deceased. She has annexed birth certificate for all her three children which indicate the deceased as their father. That prior to his death, she had matrimonial home on Mutira/Kangai/1937 registered under the deceased's name but which the petitioners unlawfully damaged and ejected her out. Fortunately her brother in law Mitaru Ngatia gave her a shanty to live on condition that she vacates by January 2017 and an agreement was duly executed in that regard.

The issue for determination is whether the objector should be allowed to construct a temporary house on the land parcel. The Court directed that the objection be heard by way of '*viva voce*' evidence. The objector adduced evidence and closed her case. The matter is pending hearing of the Petitioner's case. The objector has not indicated the provision under which this application is brought.

It would be pre-mature to allow her to put a temporary shelter on the land as this court is yet to determine whether she is a beneficiary. The objector at Paragraph -7- of her Supporting Affidavit depones that she had agreed with Mitaru to be on his land for less than six months. The agreement annexed MNM-1- dated 14/10/2014 states that she was to stay until 2017 January it states:

***"We have agreed that Margaret to stay in my(sic) from now until 2017 January .....".***

From 14/10/14 to January 2017 does not add up to six months. The objector is therefore not truthful. I find that this is a matter which ought to be heard and determined on the issue as to whether the objector is a beneficiary entitled to the estate of the deceased. This court cannot determine the issue without giving the petitioners a chance to be heard.

There is a dispute as to whether the objector was a wife of the deceased. It is only upon such a determination that the Court can determine whether she has a prima facie case with chances of success.

I am of the view that the application is pre-mature and is without merits.

I order that:

- 1) The application is dismissed.
- 2) I award costs to the petitioners.

**Dated at Kerugoya this 11<sup>th</sup> Day of October 2018.**

**L. W. GITARI**

**JUDGE**