



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
SUCCESSION CAUSE NO.510 OF 2004

In the Matter of the Estate of Kiambati Matagu (Deceased)

JACOB MURURU M' KIAMBATI..... PETITIONER

-VS-

ISAIAH KINYUA LUULU..... 1ST RESPONDENT

JEDIEL LUULU..... 2ND RESPONDENT

RULING

Abandoned application

[1] On 11th February 2010, the Petitioner filed a Chamber Summons dated 10th February 2010 which is expressed to be brought pursuant to Sections 45 and 47 of the Law of Succession Act C AP 160 of the Laws of Kenya Rule 73 of the Probate and Administration Rules, and sought the following orders:

- 1. THAT this application be certified as urgent and the same be heard ex-parte in the first instance.**
- 2. THAT an order of injunction do issue against the Respondents, their servants, employees and anyone acting on their instructions restraining them from putting up permanent buildings on LR NO. NJIA/LIBURU/101 pending the hearing and determination of this case.**
- 3. THAT the costs of the application be provided for.**

Inadvertent misrepresentation

[2] I will not, however, consider this application for reasons which will be apparent sooner. It would appear that the parties inadvertently made the court to believe that the said application was pending determination. The court, based on this misrepresentation, gave directions that the application be canvassed by way of written submissions. But, upon meticulous perusal of the record, it emerged that the said application was marked as abandoned on 30th May 2011. For avoidance of doubt, the following are recording by court (Kasango J) of proceedings had on 30th May 2011:

Mr. Rimita:

“The application dated 10th February 2010 is overtaken by events. May it be marked as abandoned.”

Mr. Mwirigi:

“No objection”.

The court then recorded:

“The application dated 10th February 2010 is marked as abandoned.”

The court further made this order:

“I order the parties take a date on distribution on priority basis. I direct distribution to be heard by way of viva voce evidence.”

Similar orders were issued by the court on 17th December 2009 thus:

“The court directs that the issue of distribution be heard by way of viva voce evidence on a date to be fixed at the registry.”

[3] None of the above orders has been reviewed or varied or set aside. Accordingly, these orders are in force and parties must comply unless and until otherwise ordered by the court. In consequence thereof, parties should comply with the directions issued by Kasango J on 30th May 2011. I direct parties to prepare the cause for hearing on distribution of the estate. It is so ordered.

Dated, signed and delivered in open court at Meru this 22nd day of February 2017

F. GIKONYO

JUDGE

In the presence of:

Mr. Ariithi advocate for respondent

Mrs. Mbaikiata for applicant

F. GIKONYO

JUDGE