

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

SUCCESSION CAUSE NO. 1875 OF 1998

IN THE MATTER OF THE ESTATE OF JAMES MUGO KIMANI – DECEASED

HILDA WAITHERA MUGOADMINISTRATOR/APPLICANT

VERSUS

JOHN GITAGIA MUGO.....RESPONDENT

RULING

1. The deceased James Mugo Kimani died intestate on 11th August 1998. He was survived by four sons (Herman Kimani Mugo, Peter Mugo, John Gitagia Mugo (the respondent) and Hiram Macharia) and three daughters (Hilda Waithera Mugo (the applicant), Mary Wangari and Winnie Wambui). A certificate of confirmation of grant was issued to the applicant showing how the estate of the deceased was shared. On 7th December 2016 the applicant filed this summons seeking the eviction of the respondent from land Parcel No. Muguga/Kanyariri/3099. Her case was that the estate had since been distributed and the respondent allocated, and become the owner of, land Parcel No. Muguga/Kanyariri/3100. He had, however, refused to move to that parcel. He had instead refused to move from Parcel No. Muguga/Kanyariri/3099 which had been ordered to be sold and the proceeds equally shared to all the beneficiaries.

2. The application was served but received no response.

3. Under **rule 73** of the **Probate and Administration Rules** of the **Law of Succession Act (Cap 160)**, this court has inherent and residual powers to make sure that the orders it has issued are observed and effected. The respondent is now the owner of Parcel No. Muguga/Kanyariri/3100 to which he should move and settle. His continued settlement on Parcel No. Muguga/Kanyariri/3099 is against the orders of the court as contained in the certificate of confirmation.

4. Consequently, I allow the application dated 6th December 2016 and filed on 7th December 2016 by the applicant. The respondent is hereby given sixty (60) days to move out of land Parcel No. Muguga/Kanyariri/3099. If he fails to leave by the end of the sixty (60) days, he will be forcefully evicted from the same. The order shall be enforced by the court bailiff and supervised by the OCS Kikuyu Police Station at the expense of the respondent. The costs of this application shall be paid by the respondent.

DATED and SIGNED at NAIROBI this 22nd day of MARCH 2017.

A.O. MUCHELULE

JUDGE

DATED and DELIVERED at NAIROBI this 3RD day of APRIL 2017.

R.E. OUGO

JUDGE