



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 472 OF 2013**

***(FORMERLY NBI HC SUCC NO 15 OF 2006)***

***IN THE MATTER OF THE ESTATE OF RUFUS KIAMBATI M'IKURI (DECEASED)***

**GLORY NKUENE RUFUS.....1<sup>ST</sup> PETITIONER**

**MARTIN KOOME KIAMBATI.....2<sup>ND</sup> PETITIONER**

**VERSUS**

**GEORGE KIRIMA ALIAS GEROGEKIRIMAMUGAMBI...OBJECTOR**

**PARTIAL RULING**

**Claim of occupation**

[1] The application dated 2<sup>nd</sup> March 2016 raises very serious allegations of intermeddling with the estate property which I am convinced must be determined in a resounding manner. But after thoughtfully perusing the arguments being presented by the parties herein, the following three things are mind boggling;

- (1) Each party is claiming the estate property is their family land where they have lived;
- (2) Each party claims that during occupation of the suit property, each carried out extensive development thereon; and
- (3) That the Objector has leased out the estate property to third parties.

[2] In light of these claims, I will only determine the application dated 2<sup>nd</sup> March 2016 partially. I will not, therefore, engage intensely on the substantive arguments on the application. Thus, I should be careful to embark on a preliminary inquiry into the above two first claims by sending the Deputy Registrar to the estate property to establish the developments done by each party, if any. Accordingly, the DR shall visit the estate property as soon as possible and not later than 21 days and file a report thereto. The said report will enable me determine whether an injunction against the Objector is merited and the scope thereof. But I will straight away deal with the last point on the leasing out of the estate property. I must state that the property in issue is the estate property for as long as these proceedings have not concluded otherwise. Again, although a grant of representation has been made to the Petitioners, the said grant has not been confirmed yet; and as such nobody, has the power of distribution. In this vein, notably, the objector is not one of the persons to whom the grant of representation in respect of the estate property was issued. Therefore,

his actions of leasing out the estate property amount to intermeddling with the estate property which could be punished under section 45 of the Law of Succession Act. I say these things knowing well that the category of acts which amounts to intermeddling with the estate property is not heretically closed and will depend on the nature of the act being complained of and the circumstances of the case. See a work of the court on intermeddling with the estate property in the case of **BENSON MUTUMA MURIUNGI vs. C.E.O. KENYA POLICE SACCO & ANOTHER [2016] eKLR** that:-

*Whereas there is no specific definition provided by the Act for the term intermeddling, it refers to any act or acts which are done by a person in relation to the free property of the deceased without the authority of any law or grant of representation to do so. The category of the offensive acts is not heretically closed but would certainly include taking possession, or occupation of, disposing of, exchanging, receiving, paying out, distributing, donating, charging or mortgaging, leasing out, interfering with lawful liens or charge or mortgage of the free property of the deceased in contravention of the Law of Succession Act. I should add that any act or acts which will dissipate or diminish or put at risk the free property of the deceased are also acts of intermeddling in law. I reckon that intermeddling with the free property of the deceased is a very serious criminal charge for which the person intermeddling may be convicted and sentenced to imprisonment or fine or both under section 45 of the Law of Succession Act. That is why the law has taken a very firm stance on intermeddling and has clothed the court with wide powers to deal with cases of intermeddling and may issue any appropriate order(s) of protection of the estate against any person.*

[3] Undoubtedly, and I have already said this, the Objector is not a holder of grant of representation over the estate property. Accordingly, as long as these proceedings have not concluded, and given the nature of the case before me and the circumstances of this case, leasing out of the estate property by the Objector to third parties is an act of intermeddling with the estate property. Therefore, in light of the above conclusions, I hereby restrain any leasing out of the estate property by any person including the Objector to any person whatsoever. Accordingly, all those who had leased the land, together with their agents and or servants, are hereby restrained from entering upon, utilizing or tilling the estate property whatsoever during the pendency of these proceedings. It is so ordered.

[4] As for the request of a temporary injunction against, and eviction of the Objector, I will deal with it once I receive the report from the DR on matters I have isolated above. On that basis, I will assign this case a mention date for purposes of receiving the above report and also giving a date for the ruling on the application dated 2<sup>nd</sup> March 2016. It is so ordered.

**Dated, signed and delivered in open court at Meru this 18<sup>th</sup> day of July 2016**

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**F. GIKONYO**

**JUDGE**

**In the presence of:**

Mr. Omari advocate for M/s. Kiome for petitioner

Objector in person – present

Petitioner - present

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**F. GIKONYO**

**JUDGE**