



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**SUCCESSION CAUSE NO. 10 OF 2013**

***In the matter of the Estate of MARGARET NGIGE AMOS (Deceased)***

**BENSON NYAGA AMOS.....APPLICANT/PLAINTIFF**

**VERSUS**

**PATRICK KATHURI AMOS.....1ST RESPONDENT**

**CATHERINE WANYAGA AMOS.....2ND RESPONDENT**

**R U L I N G**

1. This is a ruling on the application dated 11/2/2013 seeking *inter alia* that the respondents, their servants, employees or anyone claiming on their behalf be restrained from picking tea from the portions belonging to the applicant in parcel Ngandori/Kiriari/2330 pending hearing and determination of the suit. The applicant also seeks that the OCS Manyatta Police station be restrained from harassing the beneficiaries of the above estate, interfering with the status quo and be mandated to enforce compliance of the orders.

2. The application is supported by the affidavit of Benson Nyaga Amos stating that he is a beneficiary of the estate as the deceased was his mother and that he has petitioned for letters of administration in this cause. He states that the respondents have on several occasions chased away the applicant's workers from his tea plantation. It is argued that the acts of the respondents amount to inter-meddling with the said parcel of land. The respondents have on diverse dates harvested tea in the portion belonging to the applicant with the aim of provoking him.

3. In the replying affidavit, the respondents stated that the deceased was their mother and that the applicant the petitioned for letters of administration without consulting other family members. The applicant has been preventing the 2<sup>nd</sup> respondent from picking their late mother's tea. All the tea bushes do not belong to the deceased as every son in the family had tea bushes even before their mother died.

4. The applicant did not recognize that the 1<sup>st</sup> respondent had 4626 bushes while the deceased had 4077 bushes when he was dividing the bushes among the beneficiaries. The District Officer Manyatta has attempted to resolve the matter but the applicant has refused to attend the meeting sessions. The applicant threatened the local chief after he wrote to KTDA asking them to intervene. The 2<sup>nd</sup> respondent is not married but has children and is dependent on the tea bushes belonging to the deceased to make ends meet.

5. In a further affidavit, the applicant added that the tea bushes for the deceased and the 1<sup>st</sup> respondent are different from what is on the ground. The family members met on 31/7/2012 and agreed to subdivide the deceased tea bushes equally among eleven of them.

6. I have perused the application and note that the applicant seeks for injunctive orders to preserve his own portion of the tea plantation and not to preserve or prevent inter-meddling with the estate of the deceased. The respondents are children of the deceased just like the applicant and are all entitled to inherit the estate. The facts of the case bring out clearly that the parties are not in agreement as to how many tea bushes each should use or manage pending the determination of the case. This is an issue that only can be resolved by distribution of the estate.

7. The court file shows that the applicant has not been appointed the administrator of the estate. He filed this succession cause and immediately brought this application. He is the petitioner but not yet appointed the administrator. The appointment of an administrator confers on the person the powers to ensure preservation of the estate and to prevent inter-meddling by any person. An administrator has the capacity to approach the court and apply for any orders for preservation of the estate or for any other related purpose.

8. The applicant lacks this capacity and cannot expect to obtain any orders for preservation or to injunct other beneficiaries. He is a stranger until the court has appointed him the administrator of the estate. Being a petitioner does not confer any power or authority to the applicant in regard to the estate of the deceased.

9. This application is therefore not properly before the court for lack of *locus* and is hereby struck out with no orders as to costs.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 4TH DAY OF OCTOBER, 2016.**

**F. MUCHEMI**

**J U D G E**

**In the presence of:-**

**Andande for Eddie Njiru for applicant**

**respondents present in person**