



**REPUBLIC OF KENYA**

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

**PROBATE AND ADMINISTRATION DIVISION**

**SUCCESSION CAUSE NO. 1723 OF 2009**

**IN THE MATTER OF THE ESTATE OF WARUGA KAMONDU (DECEASED)**

**PERIS WANJIKU KAMARA.....APPLICANT**

**Versus**

**DAVID MAINA MWANGI.....RESPONDENT**

**R U L I N G**

1. In her Chamber Summons dated 11<sup>th</sup> January 2016, the Applicant Peris Wanjiku Kamara (hereinafter the Applicant), seeks orders that the O.C.S Githumu Police Station do carry out the eviction of the Respondent, one David Maina Mwangi (hereinafter the Respondent), and all other structures put up in the said suit property by his agents, servants all other persons who have interfered with the said suit premises Title No. Loc.3/Kariua/145 be removed. That the Registrar, Murang'a Lands Registry do remove the restriction placed on 6<sup>th</sup> November, 2015 by the Respondent.

2. The grounds of the application as contained in the face thereof are that Kimaru J on 8<sup>th</sup> April, 2011 delivered a judgment in which he dismissed the Respondent's application which had sought for the revocation of the grant issued to the Applicant by Thika Subordinate Court. That the Respondent has refused to co-operate, or to leave the said suit premises even after the court dismissed his application.

3. The Applicant has sworn an affidavit dated 11<sup>th</sup> January, 2016 in which she depones that she is the Administratrix of the deceased's estate and that she is ageing and would want to develop and settle in the suit property.

4. The Respondent opposed the application on grounds that he had filed an originating summons being HCC 200 of 2011(OS) in which temporary orders restraining the administratrix from evicting him were issued by the court. That it would be premature and against the said orders to have him evicted from the land that he has developed and called home for the rest of his life. The Respondent urged the court to hear his originating summons before ordering his eviction.

5. I have called for the file in which the orders alluded to are said to repose being, ELC file No. 200 of 2011 and found that the file does exist. The matter was filed in 2011, while this succession cause was pending and the exparte injunctive orders referred to were obtained from the ELC some two weeks after Kimaru J rendered his ruling in this succession cause. None of the two courts appears to have been made aware of the parallel proceedings in the other court.

6. The foregoing amounts to an abuse of the court process. In the ruling of the Environment and Land Court dated 22<sup>nd</sup> April 2014 however, Onguto J did observe that:

**“There is no evidence of the suit papers having been served upon the Respondent”.**

By this ruling therefore the Applicant herein has had been made aware of the existence of the exparte injunction orders in ELC 200 OF 2011.

7. Secondly, there being in existence orders issued by a court of concurrent jurisdiction, the application in this Succession Cause must of necessity, be put on hold until the Applicant approaches the Environment and Land Court to bring to the court's attention this proceedings in view of the exparte injunctive orders that are in place.

It is so ordered.

**SIGNED DATED and DELIVERED** in open court this **9<sup>th</sup> day of November, 2016.**

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**L. A. ACHODE**

**JUDGE**