



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 1120 OF 2012

IN THE MATTER OF THE ESTATE OF KAMOTA MBILA NZAU

1. MUTIO KAMOTA MBILA
2. MUIA KAMOTA PETITIONERS/APPLICANTS

VERSUS

MUTIE MUTUA
RESPONDENT

R U L I N G

1. The application dated 30/11/2012 is brought under **section 45** of the **Law of Succession Act, Rule 49 and 73** of the **Probate and Administration Rules** and all other enabling provisions of the law.
2. The application seeks orders that the Honourable Court be pleased to bar the Respondent, **Mutie Mutua** from intermeddling with the deceased's estate by way of entering, trespassing, constructing and or interfering with land parcel Number **Muputi/Kiima-Kimwe/1102** in any manner howsoever, until this matter is heard and determined.
3. The Applicants have petitioned the court for a grant of Letters of Administration intestate in the estate of **Kamota Mbila Nzau**. According to the Applicants, land parcel No. **Muputi/Kiima-Kimwe/1102** which forms part of the estate of the deceased is being wasted by the Respondent **Mutie Mutua**. It is averred that the Respondent has trespassed into the said parcel of land and is in the process of putting up a construction on the same. The Applicants have termed any purported sale to the Respondent as having been made contrary to the provisions of the law.
4. The application is opposed. According to the replying affidavit sworn by the Respondent, he purchased the parcel of land in question from the Petitioner who had the consent of the other beneficiaries. That the family of the deceased was facing financial difficulties and the sale agreement had the blessings of the area District Officer, the chief and the clan elders. The Respondent has accused the Applicants of coming to court with dirty hands after selling the property to him and receiving the purchase price of Kshs.95,000/=.
5. The Respondent has also filed a **Preliminary Objection** on the grounds that the Applicants are in breach of **section 45(1)** of the **Law of Succession Act Cap 160 Laws of Kenya** and are therefore estopped from filing the present application.
6. Both the application and the Preliminary Objection were heard simultaneously. The same were canvassed by way of written submissions which I have duly considered.
7. **Section 45** of the **Law of Succession Act Cap 160 Laws of Kenya** provides as follows:-

“Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a

deceased person.”

8. The purported sale of the property in question amounted to intermeddling in the estate of the deceased.
9. Consequently, I allow the application with costs in cause.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 5th day of February 2015.

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B. THURANIRA JADEN

JUDGE