



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA**

**ELC CASE NO. 14 OF 2020**

**LUCY WANJA SIMON.....PLAINTIFF/APPLICANT**

**VERSUS**

**SUSAN NJOKI MURIUKI.....1<sup>ST</sup> DEFENDANT**

**MARY WAGATWE MURIUKI.....2<sup>ND</sup> DEFENDANT**

**RULING**

The applicant, Lucy Wanja Simon filed the Notice of Motion dated 30<sup>th</sup> April 2020 seeking the following orders:

**1. Spent.**

**2. That this Honourable Court be pleased to issue orders declaring that the plaintiff is lawfully entitled person to decide on manner of the estate of the deceased is distributed.**

**3. That this Honourable Court be pleased to issue a temporary injunction to restrain the defendants, their servants and agents and/or employees from trespassing, interfering, destroying, wasting, or alienating parcel of land better described as MUTITHI/CHUMBIRI/353, MWERUA/KBIRIRI/1193, MWERUA/KABIRIRI/4774, MWERUA/KABIRIRI/4233 pending the hearing and determination of this application.**

**4. That this Honourable Court be pleased to issue a temporary injunction to restrain the defendants, their servants and agents and/or employees from trespassing, interfering, destroying, wasting, or alienating parcel of land better described as MUTITHI/CHUMBIRI/353, MWERUA/KABIRIRI/1193, MWERUA/KABIRIRI/4774, MWERUA/KABIRIRI/4233 pending the hearing and determination of this application.**

**5. That this Honourable Court be pleased to issue a temporary injunction restraining the defendants by themselves or through their servants or agents and/or employees from interfering or dealing with the property of the deceased until the plaintiff is recognized as the legal wife and pending the hearing and determination of this application.**

In an affidavit in support of the said application sworn the same date, the applicant deponed that she is the legal wife of one Sospeter Muriuki Kibui (deceased) who died on 26<sup>th</sup> March 2020. She further stated that they got married with the deceased in 1990 and they have been cohabiting with the deceased since then until his demise on 26<sup>th</sup> March 2020. The applicant further deponed that on 16<sup>th</sup> April 2020, the respondents appeared at her house threatening to break in and snatch hospital documents and other documents given to her by the deceased. She also stated that before his demise, she would take the deceased to various hospitals to ensure his well being using her income from small business. The applicant also deponed that her deceased husband ceased to live with the 1<sup>st</sup> defendant in 1990 and she remarried to another man. She stated that the local Chief gave her and the defendants the permit to hold gatherings for the purpose of funeral arrangements of the deceased dated 1<sup>st</sup> April 2020. The applicant further stated that during the burial, the will was read and it was properly describing the portion of land each widow should inherit.

**1<sup>ST</sup> RESPONDENT'S CASE**

The 1<sup>st</sup> respondent did not file any response to the application.

**2<sup>ND</sup> RESPONDENT'S CASE**

The 2<sup>nd</sup> respondent filed a replying affidavit on 15<sup>th</sup> June 2020 in which she stated that she is not opposed to the application. The 2<sup>nd</sup>

respondent stated that both the applicant and herself are legal wives of Sospeter Muriuki Kibui (deceased) and that the deceased left three widows with the will describing the portion of land each widow should get. The 2<sup>nd</sup> respondent further deponed and stated that the local Chief gave them the burial permit to prepare for the funeral arrangements.

ANALYSIS AND DISPOSITION

I have considered the Notice of Motion, the supporting affidavit and the annexures thereto. I have also considered the applicable law. This application has been brought under *Article 27 (1) of the Constitution and*

*Section 3A CPA*. The prayers being sought by the applicant are equitable reliefs which are founded on *Order 40 CPR*. The grounds for the grant of an injunction was set out in the celebrated case of *Giella Vs Cassman Brown & Company Ltd (1973) E.A 358* where it was held:

***“First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable harm which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on a balance of convenience”.***

The applicant is seeking to restrain the respondent from interfering with the suit properties described as L.R Number MUTITHI/CHUMBIRI/353, MWERUA/KBIRIRI/1193, MWERUA/KABIRIRI/4774 and MWERUA/KABIRIRI/4233. The copies of titles attached to the pleadings indicate that the three parcels of land are registered in the names of Sospeter Muriuki Kibui. The applicant has deponed in the supporting affidavit that the said Sospeter Muriuki Kibui was her husband and is now deceased. There is no certificate of death showing that the said Sospeter Muriuki Kibui is indeed dead. Where a person is alleged to have died, the Law of Succession comes into play and no person shall for any purpose take possession or dispose of or otherwise deal with a property belonging to his Estate without the authorization by the Court. *Section 45 of the Law of Succession* states as follows:-

***“(1) 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.***

***(2) Any person who contravenes the provisions of this section shall:***

***(a) Be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or both such fine and imprisonment and***

***(b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration”.***

The applicant has not annexed any letters of Administration showing that he has been authorized by a Succession Court to deal with the property of a deceased person. Failure to demonstrate that she has authority to deal with the Estate of Sospeter Muriuki Kibui (deceased), this Court is not available in aiding and abetting the commission of a crime. As such, the Notice of Motion dated 30<sup>th</sup> April 2020 lacks merit and the same is hereby dismissed with costs.

***READ, DELIVERED and SIGNED in open Court at Kerugoya this 3<sup>rd</sup> day of July, 2020.***

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**E.C. CHERONO**

**ELC JUDGE**

*In the presence of:*

- 1. Mr. Makori for the Applicant*
- 2. Mary Wagatwe Muriuki*
- 3. Okatch – Court Assistant.*