

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 37 OF 2014

**IN THE MATTER OF THE ESTATE OF KALEKYE MUTEVU ALIAS PHILES KALEKYE
MUTEVU (DECEASED)**

DAVID TITUS MUTUA

PHILIP MUTUA MUTEVU.....APPLICANTS

VERSUS

JOSEPH MUSYOKA MUTEVU.....RESPONDENT

RULING

1. The application dated 12th May 2014 was brought under Section 45(1) and Section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules. The application seeks orders that the Respondent/intermeddler, Joseph Musyoka Mutevu, be restrained from intermeddling and/or interfering with the parcel of land Plot No. 128 at MBEE ADJUDICATION SECTION, which is part of the deceased's estate.

2. It is stated in the affidavit in support that the deceased is the registered owner of the land in question. The Applicant's complaint is that the Respondent has entered the said land and started cutting down trees and committing other acts of wanton destruction thereon. That although the Respondent is part of the family of the deceased, he has no right to waste the said land or to deal with it in a manner that is inconsistent with the law of succession.

3. The application is opposed. According to the replying affidavit, the land in question was a gift from his father and mother (*the deceased herein*). That the Applicants did not challenge the gift *inter vivos* during the lifetime of the deceased.

4. The application was canvassed by way of written submissions which I have duly considered.

5. It is not in dispute that the land in question is registered in the name of the deceased. The letters (*annextures JMM 3 & 4*) from their late father to the parties herein is of no consequence at this stage of the case. Although the "*gift agreement*" dated 12th June 1986 is signed by both the deceased herein and her late husband, the question of the gift *inter vivos* can only be considered during the distribution of the estate (*see Section 42 of the Law of Succession Act*).

6. Since the land in question forms part of the estate of the deceased, cutting down trees and other forms of interfering with the estate of the deceased is intermeddling with the property of a deceased person. As stated in Section 45 of the Law of Succession Act –

“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.”

7. To preserve the estate of the deceased, I allow the application with costs in cause.

.....

B. THURANIRA JADEN

Dated and delivered at Machakos this 7th day of May, 2015

.....

B. THURANIRA JADEN

JUDGE