



**REPUBLIC OF KENYA**

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

**MISC. SUCCESSION CAUSE NO. 205 OF 2014**

**(In the matter of the estate of IRERI MUNGAI - Deceased)**

**MUGO MUNGAI.....APPLICANT**

**VERSUS**

**EPHANTUS MUNYI NGARI.....1ST RESPONDENT**

**TIBISIO KARIUKI MATI.....2ND RESPONDENT**

**R U L I N G**

This is a ruling on application dated 6/11/2014 seeking for orders that the respondents and their agents be restrained from entering, taking possession of, committing acts of waste and evicting the applicant from Land Parcels Nthawa/Siakago/3348 and 3349 pending the determination of summons for revocation of the grant. It also seeks that the respondents be restrained from selling, transferring, alienating and charging the titles of the said parcels. Further that the respondent be restrained from interfering with the applicants' use, occupation and control of the said parcels.

The applicants also seek for an order of inhibition against any dealings with land parcels No. Nthawa/Siakago/3348 and 3349 pending hearing and determination of the summons for revocation of the grant.

In the supporting affidavit the applicant states that the deceased was his brother and that he did not have any children and that he was not married. That the respondents in Siakago Succession Cause No. 95 of 2009 posed as deceased's step children where they were granted letters of administration intestate without the knowledge of the applicant. The grant was confirmed and the said parcels transferred to the respondents in February 2014. However, the applicant states that he had obtained a copy of the register of the land parcels in March 2014 which indicated that the deceased was still the registered owner. He therefore suspect that there was fraud surrounding the registration of the land parcels in the names of the respondents.

The applicant claims that he ranks first in priority in the grant for letters of administration in the estate of his brother. The respondents are not related to the deceased and so they are not entitled to obtain letters of administration and to inherit the property.

The respondents in their replying affidavit depones that they had bought the said parcels of land from the deceased before he died. To the affidavit was annexed the sale agreements signed between them and the deceased. It is alleged that the applicant and his family were notified of the respondents' intention of filing the

succession cause. It is deponed that the applicant's family appointed one Joseph Kariuki Mugo for purposes of completing the sale transaction and filing succession proceedings. The respondents state that they paid the balance of the purchase price to Joseph Mugo before he filed the succession cause. The respondents contend that they were entitled to have the land parcels bequeathed to them as beneficiaries upon completion of the transactions. The respondents said that they have no objection to orders of inhibition against the titles pending the determination of the summons for revocation.

The applicant in his supplementary affidavit denies knowledge of the sale transaction between the respondents and the deceased. He states that he was also not a party to the appointment of his son Joseph Kariuki Mugo to receive the balance of the purchase price and to pursue the succession.

The copies of register for parcel No. 3348 and 3349 indicate that the parcels were transferred to the 1st and the 2nd respondents respectively following succession proceedings. The certificate of confirmation also indicates that the 1st respondent was the beneficiary of parcel No. 3349 while the 2nd respondent was bequeathed parcel No.3348. It is not in dispute that the respondents were not related to the deceased and that they both admit that the relationship between them and the deceased was only that of buyer and seller.

It is also clear from the register that parcels No. 3348 and 3349 were as a result of sub-division of parcel No. 1196 which was registered in the name of the deceased. The sale agreement demonstrates that the deceased was selling parcel No. 1196 to the respondents. There is also another sale agreement between the 2nd respondent and Joseph Kariuki Mugo.

Section 39 of the Law of Succession Act provides that:-

*1. Where an intestate has left no surviving spouse or children, the intestate estate shall devolve upon the kindred of the intestate in the following order of priority*

*(a) Father; or if dead*

*(b) Mother, or if dead*

*(c) Brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none*

*(d) Half-brothers and half-sisters, in equal shares; or if none*

*(e) The relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.*

*2. Failing survival by any of the persons mentioned in paragraphs (a) to (e) of subsection (1), the net intestate estate shall evolve upon the State, and be paid into the Consolidated Fund.*

The law is very clear that the applicant ranks higher in priority in applying for letters of administration and pursuing the succession cause of his deceased brother. Joseph Kariuki Mugo the applicant's son would only have filed the succession cause only if the applicant was not living or had duly authorized him. Since the applicant denies that he gave his son the authority to file the succession proceedings on his behalf, the said

Joseph Kariuki Mugo had no legal basis to do so. There was no affidavit from Joseph Kariuki Mugo to confirm or deny the allegations made by the respondents.

In view of the foregoing, it is important that the two parcels of land be preserved pending the determination for summons for revocation. The respondents have said that they have no objection to the orders of inhibition. The orders of inhibition should go together with those of restraining the respondents from entering, transferring and committing acts of waste on the said parcels of land.

The application dated 6/11/2014 is hereby allowed in terms of prayers (c) and (d). Each party to meet their own costs.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 2ND DAY OF JUNE, 2015.**

**F. MUCHEMI**

**JUDGE**

**In the presence of:-**

**Mr. Mogusu for Respondent**